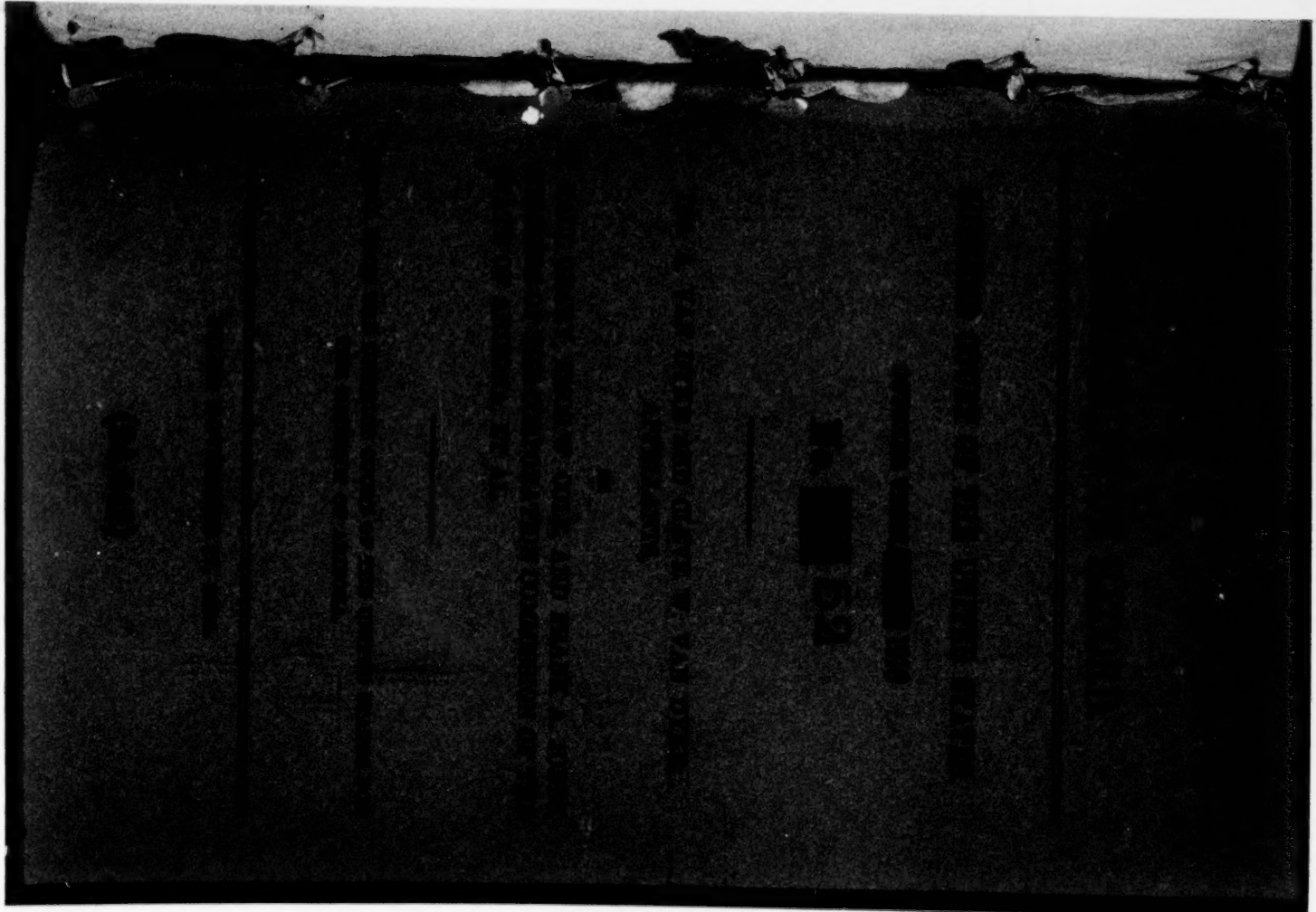


(24,442)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 286.

IDA A. VAN DYKE AND CLEVE W. VAN DYKE, APPELLANTS,

vs.

W. PAUL GEARY, AMOS W. COLE, AND FRANK A. JONES, MEMBERS OF THE CORPORATION COMMISSION OF THE STATE OF ARIZONA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ARIZONA.

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a *Names and Addresses of Attorneys of Record.*

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George P. Bullard, Phœnix, Arizona, Attorney for Defendants.

1 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Amended Bill of Complaint.

To the Honorable Judges of the District Court aforesaid:

The complainants above named bring this, their bill of complaint against the defendants above named and each of them and allege:

I.

That complainants are husband and wife and that at all times in this bill of complaint mentioned were and now are natural citizens of the United States, over the age of twenty-one (21) years and residing at the town of Miami, Gila County, State of Arizona; that defendants, W. Paul Geary, Amos W. Cole, Frank A. Jones, George P. Bullard and Norman J. Johnson are citizens of the State of Arizona, all with the exception of Norman J. Johnson residing in Phœnix, Arizona, and that defendant, Norman J. Johnson, is a resident of the County of Gila, State of Arizona, defendant, The Corporation Commission of the State of Arizona, is a citizen and resident of the State of Arizona, having and maintaining an office in the City of Phœnix, Arizona; this suit involves a controversy between the above named
2 complainants, each of whom is a resident and citizen of the State of Arizona on the one hand and above named defendants, all of whom are citizens and residents of the State of Arizona on the other hand, and this suit is one arising under the constitution and laws of the United States, other than those requiring diversity of citizenship for Federal jurisdiction, and the amount of controversy herein and for which relief is sought greatly exceeds the sum or value of Three Thousand ($3,000.00) Dollars, exclusive of interest and costs; defendant, The Arizona Corporation Commission is a duly and regularly constituted board of the State of Arizona, and the de-

fendants, W. Paul Geary, Amos W. Cole and Frank A. Jones and each of them at all times herein mentioned have been and now are the duly elected, qualified and acting members of the said Arizona Corporation Commission of the State of Arizona; defendant, George P. Bullard is the duly elected, qualified and acting Attorney General of the State of Arizona; defendant, Norman J. Johnson is the duly elected, qualified and acting County Attorney of Gila County, State of Arizona, being the County wherein is situated the property owned by complainants.

II.

That said Arizona Corporation Commission as such regularly constituted board is, under the provisions of the constitution of the State of Arizona and of the Legislature of said State prescribing, regulating and defining the duties thereof, a board exercising quasi judicial, legislative and ministerial functions, and is exercising and attempting to exercise such quasi judicial, legislative and ministerial functions in a cause pending before it, wherein The Arizona Corporation Commission is complainant, and Granite Springs Water Company, Inc., C. W. Van Dyke and I. A. Van Dyke, complainants herein are respondents; said cause and said proceeding being in said The Arizona Corporation Commission designated as "Docket No. 69, Sub. 1," and is the Board before whom said pending action is laid, and the proceedings hereinafter set forth were had and taken; and

3 complainants further allege that on or about the 1st day of March, 1910, and since said time at the Town of Miami, County and State aforesaid, complainants in their capacity as natural citizens of the United States, and not acting in the capacity of a co-partnership, firm, company, association or corporation, and at an expense by them individually incurred have invested money and property of a value amounting to One Hundred Eighty-five Thousand Eight Hundred Eighty Seven ($185,887) Dollars or thereabouts, and thereby caused to be installed and thereafter in the individual name of Ida A. Van Dyke, operated a water system, consisting of water sheds, water basins, right of way, water rights, wells, pumps, water mains, pipes, hydrants, meters and other necessary and convenient apparatus and fixtures for the purpose of conducting the business of distributing, delivering and selling water for domestic, commercial and fire use in the town of Miami, said County and State and that ever since the 28th day of November, 1911, complainant, Ida A. Van Dyke has been and now is the sole owner of certain real and personal property located in said town of Miami and adjacent thereto, consisting of water mains, wells, engines, pumps, tanks, reservoirs, meters, hydrants, buildings, rights, franchises, easements connected with said wells and extending through said town, and since said date has been and now is engaged in the distribution and sale of said water to the inhabitants of said town for domestic, commercial and fire uses.

(Amendment to be Known as Paragraph 2½ and to be Inserted After Paragraph II, on page IV, of the Bill.)

That prior to the 28th day of November, 1911, the said I. A. Van Dyke Cleve W. Van Dyke and L. D. Van Dyke organized a corporation under the laws of Arizona known as the Miami Townsite Company, which said townsite company purchased a tract of land for the purpose of establishing a town thereon, and caused said tract of land to be surveyed into lots, blocks, streets and alleys and established a townsite business; that said land so purchased by the said Miami Townsite Company is the same land upon which is now situated a part of the town of Miami in Gila County, State of Arizona.

That in order to facilitate the establishment of said town and to sell and dispose of lots of land therein, and to provide the purchasers of lots within said town with water, and to protect the inhabitants thereof against damage and loss by fire, the said I. A. Van Dyke, in connection with said townsite business, established and developed a water system known as the I. A. Van Dyke Water System upon the land within the said town of Miami and adjacent thereto, which said system is connected with the wells of water owned by said I. A. Van Dyke hereinabove mentioned; that said system so established by the said I. A. Van Dyke was established, and is now being conducted by her for the sole purpose of supplying purchasers of land of the Miami Townsite Company who might reside thereon, with water for domestic, commercial and fire uses, and was not established for the purpose of supplying the public generally with water. That the said I. A. Van Dyke in the sale and distribution of said water in and about the town of Miami is not owning, operating or managing a public service corporation or public utility.

III.

Complainants allege that the constitution of the State of Arizona, provides in part as follows:

"Article XIV. Sec. 1. The term 'corporation,' as used in this Article, shall be construed to include all associations and joint stock companies having any powers or privileges of corporations not possessed by individuals or co-partnerships, and all corporations shall have the right to sue and shall be subject to be sued, in all courts, in like cases as natural persons."

"Article XV. Sec. 2. All corporations other than municipal engaged in carrying persons or property for hire; or in furnishing gas, oil, or electricity for light, fuel, or power; or in furnishing water for irrigation, fire protection, or other public purposes; or in furnishing, for profit, hot or cold air or steam for heating or cooling purposes; or in transmitting messages or furnishing public telegraph or telephone service, and all corporations other than municipal, operating as common carriers, shall be deemed public service corporations."

"Article XV. Sec. 3. The Corporation Commission shall have power to and shall prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be

made and collected by public service corporations within the State for services rendered therein."

"Article IV. Sec. 13. Every Act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be embraced in the title."

In the exercise and attempted exercise of the powers claimed by respondents as Corporation Commissioners, said The Arizona Corporation Commission and said George P. Bullard, as complainants are informed and believe, claim the right to perform the acts, exercise the supervision and control of and make and enforce the orders as against complainants as hereinafter in this bill of complaint set forth, by virtue of the provisions of the constitution of the State of Arizona and of Chapter XI, Title IX of the Revised Statutes of Arizona 1913, which said Chapter as enacted by the Legislature of the State of Arizona is designated and entitled:

"Chapter 90. An Act Relating to Public Service Corporations, Providing for the Regulation of the Same, Fixing Penalties for the Violation Thereof, and Repealing Certain Acts; With an Emergency Clause."

Said Act, among other things, contains the following provisions:

"Sec. 1. This Act shall be known as the 'Public Service Corporation Act' and shall apply to the public service corporations herein described and to the Commission herein referred to."

"Sec. 2. (*c*) The term 'Corporation,' when used in this Act, includes a corporation, a company, an association, and a joint stock association."

"Sec. 2. (*d*) The term, 'Person,' when used in this Act, includes an individual, a firm, and a co-partnership."

6 "Sec. 2. (*w*) The term 'Water system,' when used in this Act, includes all reservoirs, tunnels, shafts, dams, dikes, headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures, and personal property, owned, controlled, operated or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage, apportionment, or measurement, or water for power, fire protection, irrigation, reclamation, or manufacturing, or for municipal, domestic, or other beneficial use."

"Sec. 2. (*z*) The term 'Public service corporation,' when used in this Act, includes every common carrier, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, and warehouseman, as these terms are defined in this section, and each thereof is hereby declared to be a public service corporation and to be subject to the jurisdiction, control, and regulation of the Commission and to the provisions of this act."

"Sec. 2. (*x*) The term 'Water corporation,' when used in this Act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any water system for compensation within the State."

IV.

Complainants reallege that at the time of the exercise of the powers by said respondents claimed to be the rightful exercise thereof within the powers and jurisdiction claimed by respondents to be conferred upon them under the constitution of the United States and of the State of Arizona, and the laws of said State of Arizona as hereinafter set forth, the said Ida A. Van Dyke was a natural citizen of the United States, conducting in her own name and as an individual, the business of furnishing, distributing and selling water for hire for domestic, commercial and fire uses in the town of Miami, said County and State, and was not in any manner whatsoever, acting as an association, joint stock company or corporation, having any of the powers or privileges of corporations not possessed by individuals or co-partnerships under the provisions of Article XV, Sec. 1, of the constitution of the State of Arizona hereinabove set forth; that said Corporation Commission, and the members thereof, defendants above named, and the said George P. Bullard, Attorney General, another of the defendants above named, notwith-
7 standing the provisions of the constitution of the State of Arizona, and the provisions of Act 90 of the laws of the State of Arizona, being Chapter XI of the Revised Statutes of the State of Arizona 1913, and notwithstanding the provisions and contents of the title of said Act as hereinabove set forth, did on the 17th day of October, 1913, cause to be instituted and laid before the Corporation Commission of the State of Arizona, a complaint wherein The Arizona Corporation Commission was named as complainant and the Granite Springs Water Company, Inc., C. W. Van Dyke and I. A. Van Dyke were named as respondents, designating said complaint in said proceedings as "Docket No. 69, Sub. 1," therein citing these complainants to appear before said Corporation Commission and make answer to said complaint, or to satisfy the matters and things therein complained of, which complaint is herewith attached, fully set forth at length, marked "Exhibit A" and referred to as a part of this complaint; that in response to said complaint, these complainants, therein named as two of the respondents, interposed before said Commission, a verified plea in bar, denying the right, authority or jurisdiction of said The Arizona Corporation Commission from asserting or attempting to assert any right, power, authority or jurisdiction over these complainants, respondents in said proceedings, or either of them upon the grounds that at the time of the filing of said complaint, these complainants and each of them were natural citizens of the United States; that the said Ida A. Van Dyke on the 28th day of November, 1911, and prior to the adoption of the State Constitution or the enactment of said Act 90, and ever since said date had been, then was and now is the sole owner of said water system and was not an artificial person, corporation, association, joint stock company or co-partnership, and further alleging that under the provisions of the constitution of the State of Arizona and of the laws of the State of Arizona,
8 said The Arizona Corporation Commission was without power, authority or jurisdiction to entertain or prosecute

said hearing and investigation, and further in said plea in bar alleging that the attempted exercise by said The Arizona Corporation Commission of the right, power and authority by it claimed to exist, would result in an unauthorized and illegal interference with and possible reduction of the rates and charges made and charged and collected by the said Ida A. Van Dyke as a natural person and an individual for the sale and distribution of water in said town of Miami; that any order and the enforcement or attempted enforcement thereof would result in the taking of the rights, interests and property of the said Ida A. Van Dyke without her consent, in derogation of her common law right, and would be depriving her of her property without due process of law contrary to the Fifth Amendment to the Constitution of the United States, and further setting forth that said attempted exercise of jurisdiction and control by said The Arizona Corporation Commission was void and illegal in that said attempted exercise of authority under the constitution of the State of Arizona and that laws of the said State of Arizona was a violation of the provisions of the Fourteenth Amendment of the Constitution of the United States in that it denies to these respondents the equal protection of the laws and tended to deprive them of their vested property rights and interests without due process of law. Said plea in bar is herein attached, marked "Exhibit B", made a part of this bill of complaint and is herein referred to.

That on the 10th day of November, 1913, said The Arizona Corporation Commission made and entered an order denying said plea in bar and thereafter without right, power or authority proceeded to hold and conduct a hearing based upon the complaint theretofore filed, which hearing was held on the 1st day of December, 1913;

9 that on the 12th day of November, 1913, subsequent to the denial by said The Arizona Corporation Commission of the plea in bar theretofore interposed and within the time prescribed by the laws of the State of Arizona, these complainants, respondents in said proceeding, filed a motion for a rehearing of the order denying said plea in bar, therein setting forth the reasons hereinabove given, which order was denied by said The Arizona Corporation Commission;

That subsequent to said hearing, and on the first day of May, 1914, said respondents in their capacity as Commissioners of The Arizona Corporation Commission, and said The Arizona Corporation Commission made and entered an order fixing and prescribing rates to be charged and collected by complainant, Ida A. Van Dyke, the owner of said water system, and by Cleve W. Van Dyke, manager thereof, which order of said Corporation Commission is hereto attached, marked "Exhibit C", made a part of this complaint and to which reference is hereby made;

That on the 14th day of May, 1914, complainants made and filed with The Arizona Corporation Commission a motion that said order marked "Exhibit C" be set aside and a rehearing granted, which said motion was by said The Arizona Corporation Commission on the 15th day of May, 1914, denied and which said motion for a re-

hearing is hereto attached, marked "Exhibit D" and made a part of this complaint;

That on the 18th day of May, 1914, complainants filed with said The Arizona Corporation Commission, a request that the operation of said order so made should be suspended for the purpose of permitting and enabling these complainants to take such proceedings under the provisions of the laws of the State of Arizona as by them might be deemed necessary or expedient to obtain a writ of review of said order in the State Courts of the State of Arizona pursuant to the rights purported to be given them under the laws of said State, but that said The Arizona Corporation Commission, notwithstanding said application did on the 20th day of May, 1914, refuse and deny to complainants suspension of the operation of said order by reason of which denial, said order became effective on the 25th day of May, 1914, and ever since said date had been and now is in full force and effect. Said petition is attached, set forth at length, marked "Exhibit E," and herein referred to.

V.

That in ascertaining the property of the water system owned and operated by complainant, I. A. Van Dyke, used and useful in connection therewith and in estimating the value thereof, for the purpose of fixing rates. The Arizona Corporation Commission failed to include in the property of the said water system or consider or allow, a large tract of land containing about two hundred forty acres and constituting a water basin for the storage of water and of the value of more than $38,400.00 and failed to include in the property of the said system or consider and allow one large well and drift connected therewith of the value of about $2,000.00, also a water right of the value of more than $20,000.00, the main pumping plant, of a value of $3,000.00, a spur track, value $500.00, and other property of great value.

That complainant, I. A. Van Dyke had established, prior to the proceedings before said Corporation Commission, a schedule of rates, tolls, rentals and charges for water sold and distributed to her customers as set forth in "Exhibit A" hereto annexed. That under said rates, tolls, rentals and charges the revenue and income for the sale and distribution of water for the year ending May 1st, 1914, was the sum of $26,507.15. That said income yielded a net operating revenue over and above the operating expenses, including depreciation, and taxes for said year of about five per cent. upon the present value or upon a fair and just valuation of the property of said water system, and that the rate of return therefrom that may be reasonably expected for the next ensuing year under the same rates will not exceed those of the year last above mentioned.

That the rates that the Arizona Corporation Commission has fixed and prescribed by its decision and order of May 1st, 1914, will result in a diminution of the net operating revenue of said water system by complainant, I. A. Van Dyke, by at least the sum of $10,000.00 per annum. That the rates fixed and pre-

scribed by said order of said Corporation Commission are unlawful, unjust, unreasonable and confiscatory, and the same cannot be adopted or put or continued in force by complainant I. A. Van Dyke, without serious and irreparable loss to complainant and destruction of her property rights and interests. That the rates fixed and prescribed by said Corporation Commission are not compensatory but are unreasonably low and confiscatory.

That the enforcement of said order of said Corporation Commission will deprive complainant, I. A. Van Dyke, of a just, fair and equitable return upon her property and investment. That the enforcement of said order will deprive complainant of her property without due process of law and will deprive her of equal protection of the law in contravention of the constitutions of the United States and of the State of Arizona.

VI.

Complainants alleges that defendants W. Paul Geary, Amos W. Cole, Frank A. Jones and defendant, The Arizona Corporation Commission has no right, power, authority or jurisdiction under the constitution of the United States, the constitution of the State of Arizona or under the laws of the State of Arizona, to entertain or prosecute such action before said Corporation Commission, designated as "Docket No. 69, Sub. 1," or to make any order or decision therein, and that any order or decision made by defendant, The Arizona Corporation Commission in said action modifying or reducing the rates, tolls, rentals and charges made, charged and collected by said complainant, Ida A. Van Dyke therein acting in her capacity as a natural person and as an individual, in the sale
12 and distribution of water in said town of Miami, or in the vicinity thereof, would be and is the taking of rights, interests and property of the said Ida A. Van Dyke without her consent, in derogation of her common right and in violation of the Fifth Amendment of the Constitution of the United States and of Sec. 4, Article II of the constitution of the State of Arizona providing that no person shall be deprived of property without due process of law; that said The Arizona Corporation Commission for the reasons above given is without right, power or authority to find or hold that Ida A. Van Dyke, being the sole owner of said business, is doing business as a public service corporation in distributing, delivering and selling water for domestic, commercial and fire use in the town of Miami, or that *that* said Ida A. Van Dyke and Cleve W. Van Dyke constitute a water corporation, owning, controlling, operating and managing a water system for compensation in the town of Miami, State of Arizona and are doing business as a public service corporation in distributing, delivering and selling water for domestic, commercial and fire uses in said town as said findings appear to have been made in the opinion and order in said cause made and entered by said Corporation Commission, in this, to-wit:

That said Corporation Commission is without right, power or authority under the provisions of said Chapter 90 of the laws of the

First Legislature of the State of Arizona to investigate and control the acts of individuals engaged in public service enterprises for the reason that the subject of said act referring to the investigation of individuals is not embraced in the title of said act and for the further reason, in addition to the reasons hereinabove set forth that the constitution of the State of Arizona by the provisions of Sec. 1, Article 14, defines corporations generally and Sec. 2 of Article 15 defines public service corporations and that the Legislature of the State of Arizona under the limitation of the definition of public service corporations and corporations in said con-
13 stitution set forth as hereinabove mentioned, has no right, power or authority to limit, modify, extend or enlarge said definition in any manner whatsoever, and that the attempt on the part of said legislature to modify, extend and enlarge said definition of a corporation and said definition of a public service corporation so as to include an individual or a person, is in derogation of the rights of these complainants as individuals, deprives them of the equal protection of the laws and effects the taking of their property without due process of law.

VII.

Complainants further allege that Sec. 67 (*h*) of the Arizona Public Service Corporation Act provides in part as follows:

"No court of this State shall have jurisdiction to enjoin, restrain, suspend or delay any order or decision of the Commission, or to enjoin, restrain or interfere with the Commission in the performance of its official duties, and the rules, regulations, orders, decrees fixed by the Commission shall remain in force pending the decisions of the courts: provided, that the writ of mandamus shall lie from the supreme court to the Commission in all proper cases."

That Section 68 of said Act provides as follows:

"All rules, regulations, orders, charges and decrees of the Commission shall remain in full force and effect pending a final decision of the Court with reference thereto. No order staying, restraining or suspending any order, rule, regulation, charge, or decree of the Commission shall be made by any court of this State."

That the Constitution of Arizona, Article XV, Section 17, provides as follows:

"Nothing herein shall be construed as denying to public service corporations the right of appeal to the courts of the State from the rules, regulations, orders or decrees fixed by the Corporation Commission, but the rules, regulations, orders or decrees so fixed shall remain in force pending the decision of the courts."

That Section 74 (*b*) of said Act provides as follows:

"All penalties accruing under this Act shall be cumulative of each other, and a suit for the recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any criminal prosecution against any public
14 service corporation, or any officer, director, agent or employee thereof, or any other corporation or person, or be a bar to the exercise by the Commission of its power to punish for contempt."

That Section 76 (*a*) of said Act provides as follows:

"Any public service corporation which violates or fails to comply with any provisions of the constitution, of this State or of this Act, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement or any part or provision thereof, of the Commission, in a case in which a penalty has not hereinbefore been provided for such public service corporation, is subject to a penalty of not less than One Hundred Dollars nor more than Five Thousand Dollars for each and every offense."

That Section 76 (*b*) of said Act provides as follows:

"Every violation of the provisions of this Act, or of any order, decision, decree, rule, direction, demand, or requirement, of the Commission, or any part or portion thereof by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense."

That Section 76 (*c*) of said Act provides as follows:

"In construing and enforcing the provisions of this Act relating to penalties the acts, omission or failure of any officer, agent, or employee of any public service corporation, acting within the scope of his official duties or employment, shall in every case be and be deemed to be the act, omission, or failure of such public service corporation."

That Section 77 of said Act provides as follows:

"Every officer, agent or employee of any public service corporation, who violates or fails to comply with, or procures, aids or abets any violation by any public service corporation of any provisions of the Constitution of this State or of this Act, or who fails to obey, observe or comply with any order, decision, rule, direction, demand or requirement of any part or provisions thereof, of the Commission, or who procures, aids, or abets any public service corporation in its failure to obey, observe, and comply with any such order, decision, rule, direction, demand or requirement, or any part or provision thereof in a case in which a penalty has not hereinbefore been provided for such officer, agent or employee, is guilty of a misdemeanor and upon conviction thereof is punishable by a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year or both such fine and imprisonment."

That Section 81 of said Act provides as follows:

"In case any public service corporation, corporation or person shall fail to observe, obey or comply with an order, decision, rule, regulation, direction, demand or requirement, or any part or portion thereof, of the Commission or any commissioner, such public service corporation, corporation or person shall be in contempt of the Commission and shall be fined by the Commission a sum not less than one hundred dollars nor more than five thousand dollars, to be recovered before any court of competent jurisdiction in this State."

That the Constitution of Arizona, Article XV, Section 16, provides as follows:

"If any public service corporation shall violate any of the rules, regulations, orders or decrees of the Corporation Commission, such corporation shall forfeit and pay to this State not less than one hundred dollars nor more than five thousand dollars for each such violation, to be recovered before any court of competent jurisdiction."

That Section 66 of said Act provides in part as follows:

"An application for rehearing shall not excuse any corporation or person from complying with and obeying any order or decision, or any requirements of any order or decision of the Commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the Commission may by order direct."

That Section 67 (*a*) of said Act provides in part as follows:

"Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the rendition of the decision on rehearing, any public service corporation governed by the provisions of this Act, or other party in interest, or the Attorney General on behalf of the State, being dissatisfied with any order of the Commission fixing any valuation, rate, joint rate, toll, fare, charge, or findings, rule or regulation, classification or schedule, or any order fixing any regulations, practices, demand or requirement, act or service may commence an action in the superior court of the county in which the Commission has its domicile against the Commission as defendant to vacate and set aside any such order * * *."

That Section 67 (*b*) of said Act provides as follows:

"The answer of the Commission to the complaint shall be served and filed within twenty (20) days after service of the complaint, whereupon said action shall be at issue and stand ready for trial upon ten days' notice to either party."

16 VIII.

Complainants allege that should they commence an action in the Courts of the State of Arizona to review and set aside said order under the provisions of the Constitution of the State of Arizona and of said Act 90, and because of the fact that the application of complainants for a suspension of said order was denied there is no possible way for them to escape irreparable loss; there is no court of the State of Arizona under the provisions of Act 90 that has jurisdiction to enjoin the enforcement of the rates fixed by said Commission for the reason that under the provisions of said Act 90, said The Arizona Corporation Commission is made the sole judge of the necessity, justice and expediency of suspending the operation of any order so by it made; that if complainants desired or attempted to take advantage of the manner and mode of appeal and review purported to be given by the provisions of said Act 90, said order so by said Corporation Commission in the matter hereinbefore referred to made, would subject complainants to a penalty which might amount to five thousand dollars per day from the 25th day of May, 1914, to the 15th day of June, 1914, and as to the said Cleve W. Van Dyke, acting as the agent and manager of complainant, Ida A. Van

Dyke in the business of distributing water in the town of Miami, he would in addition to being subject to the imposition of a penalty amounting to five thousand dollars a day be subject to a penalty of one year's imprisonment for each day upon which he refused to obey the order of said Commission;

Furthermore, in the event complainants shall obey the order of said Commission pending the determination of the jurisdiction of said Commission to make and enter said order and to prescribe said rates, and equitableness of said rates, no provision is made in said order of said Commission for reimbursing complainants for the loss in revenue they will suffer by putting into effect said order of said Commission pending the final decision of the Courts, should
17 said action to set aside said order be commenced and said order be ultimately held to be illegal and void, and complainant Cleve W. Van Dyke, acting as the agent of Ida A. Van Dyke during the pendency of said proceedings, if so taken, would be subjected to the possible imprisonment of one year for each day covering the period during which he should fail to observe and obey said order as more fully appears from Section 67 (*h*) of said Act 90 and the subsequent sections heretofore set forth at length.

That under the conditions as hereinabove set forth these complainants in attempting to take advantage of the manner, mode and means of review of the order of said Corporation Commission purported to be given them under the laws of the State of Arizona, and acting in all respects as required by said laws, and within the time prescribed in the institution and prosecution of said review, would be subjected to a penalty possibly amounting to two hundred thousand dollars, and in addition thereto, the said Cleve W. Van Dyke, acting as agent and manager for the said Ida A. Van Dyke would be subjected to possible imposition of imprisonment of one year for each day from the 25th day of May, 1914, up to and including the day of the final decision which might be rendered in the State Courts; that the penalties imposed by said Act were and are intended to and calculated to coerce the said Ida A. Van Dyke and her agents to acquiesce therein and to prevent the said Ida A. Van Dyke, (by said The Arizona Corporation Commission adjudged to be a public service corporation and conducting a water corporation), and the said Cleve W. Van Dyke as her agent and manager, to acquiesce therein; and to prevent complainants and other individuals and other public service corporations from resorting in an orderly way to the Courts to obtain a judicial determination of the reasonableness, justness and validity of any decision and order made by said Commission while other litigants enjoy such rights without being subject to such restrictions and penalties. A refusal and failure to observe and comply with the order of said Commission, if only for the purpose of having the question decided in good faith in a
18 court of law, would involve a risk of absolute ruin and consequently of irreparable loss to complainants in that said complainants furnish water to over 400 customers in the town of Miami aforesaid and that said Act may be interpreted to impose a penalty of at least Three Thousand Dollars for every monthly charge

to each customer in excess of the rates fixed by said Commission in said order. In other words, the possible penalties under the said Act in case each such charge in excess of the rate fixed by said Commission should be held to be a violation of the Act, would amount to Sixty Million ($60,000,000) Dollars per month.

That in consequence thereof, the damage to said complainants would be irreparable and complainants would thereby be deprived of their property without due process of law in contravention of the Constitution of the United States and of the Constitution of the Sate of Arizona, and would be denied the equal protection of the laws in contravention of the Constitution of the United States. Furthermore, in any action brought in the courts of said State of Arizona to recover damages or to enforce any of said penalties the complainants would not have the right to enquire into the validity of said order or to review the proceedings had before the Commission owing to said Public Service Corporation Act, which provides as follows:

"Sec. 65. In all collateral actions or proceedings, the orders and decisions of the Commission which have become final shall be conclusive."

The defendants, George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of the County of Gila, said State of Arizona, have no discretion in the matter but the absolute duty is imposed upon them by Section 72 of said Acts upon the request of the Commission to institute suits for the recovery of said penalties.

19 That Section 73 of said Act provides as follows:

"(*a*) In case any public service corporation shall do, cause to be done, or permit to be done, any act, matter, or thing prohibited, forbidden, or declared to be unlawful, or shall omit to do any act, matter or thing required to be done, either by the Constitution, any law of this State or any order or decision of the Commission, such public service corporation shall be liable to the persons or corporations affected thereby for all loss, damages or injury caused thereby or resulting therefrom, and if the Court shall find that the act or omission was wilful, the Court may in addition to the actual damages award damages for the sake of example and by way of punishment. An action to recover for such loss, damage or injury may be brought in any court of competent jurisdiction by any corporation or person."

"(*b*) No recovery as in this section provided shall in any manner affect a recovery by the State of the penalties in this Act provided or the exercise by the Commission of its power to punish for contempt.

(Amendment to be Known as Paragraph 8½ and to be Inserted After Paragraph 8, on Page 24, of the Bill.)

Complainants allege that in the maintenance and operation by Ida A. Van Dyke of said water system, known as the Ida A. Van Dyke water system, she is acting as an individual and a person and that said water system is not operated under grant of statutory au-

thority or franchise, and neither said water system or the said Ida A. Van Dyke is exercising any of the powers or privileges of corporations not possessed by individuals or co-partnerships. That the questions presented for determination in this bill of complaint have never been presented for determination to the courts of the State of Arizona, nor is there now pending or undetermined any cause of action in the courts of the State of Arizona involving the construction of said Act 90 or the provisions of the Arizona State constitution presented in this bill of complaint.

Complainants further allege that the effect and operation of the provisions of Act 90 for the reasons in this bill of complaint set forth are such as to render the rates fixed by order of the Arizona Corporation Commission conclusive and by imposing prohibitive
20 conditions on the right of appeal from the order of said Commission, and denying relief in collateral actions and proceedings, has worked an abandonment by any public service corporation, subject to the jurisdiction, supervision and control of the Corporation Commission, of the right to review any order made by said Corporation Commission, whereas other litigants have such right of review and for these reasons, as well as for the reasons heretofore in this bill of complaint mentioned, denies to these complainants the equal protection of the laws and deprives them of their property without due process of law, in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States and of the Constitution of the State of Arizona.

IX.

That every charge for water service to be made by complainant, Ida A. Van Dyke, to each of her customers after May 25th, 1914, based upon the existing rates before modification thereof by the order of said Corporation Commission, wherein said Corporation Commission held that the said Ida A. Van Dyke, although a natural person was doing business as a public service corporation; and further holding that the said Ida A. Van Dyke and Cleve W. Van Dyke, the complainants herein constitute a water corporation doing business as a public service corporation, may result in one or more actions against complainants, and one or more criminal proceedings against them, and that unless complainants accept and observe said order so by said Commission made effective and operative May 25th, 1914, and submit themselves to all of the provisions thereof and duly adopt the rates prescribed therein, notwithstanding the same are unfair, unreasonable, unjust and confiscatory, and in violation of the Constitution of the United States and of the Constitution of the State of Arizona; or unless said complainants, their agents and employees are protected by the order of this Court, the said complainants, their agents and employees will be subject to an
21 endless number of actions at law and of criminal proceedings, and there will thereupon result a multiplicity of suits against said complainants and criminal proceedings against both of said complainants, their agents and employees, resulting in the imprisonment of many agents and employees of complainants and serious,

irreparable loss, damage and injury to said complainants for which complainants have no adequate remedy at law.

That should complainants bring an action in the Federal Court asking injunctive relief against the order of said Commission fixing rates and should a temporary restraining order be issued, restraining the Commission and the State authorities from taking steps to enforce penalties for disobedience of said order, and then should the Federal Court decline to take jurisdiction of the case at the hearing upon the application for a temporary injunction, and should the agents and employees of complainants in the meantime have failed to put said order of said Commission into effect, said agents and employees and said complainants would have no defense to an action or actions by the Attorney General or County Attorney or said Commission to enforce the penalties specified in Sections 76, 77, 81 of said Act, above quoted and Section 16 of Article XV of the Constitution of said State of Arizona, above quoted, and actions by persons and corporations for damages or injury as specified in Section 73 of said Act, above quoted, for disobeying the order of said Commission; and even should such Federal Court take jurisdiction and issue a preliminary injunction as prayed, but should the permanent injunction be denied after trial upon the merits, here also said officers, agents and employees of complainants, and complainants, would have no defense to the actions for penalties and damages or injury above referred to. On the other hand, should complainants, their agents and employees put said order of said Commission into effect and comply therewith in every respect until final determination of such suit, and in that case should a permanent injunction be finally granted and the contentions of complainants be upheld, they would have suffered
22 the loss of the rate differences as directed in said order, as hereinabove set forth, and would be deprived of their property greatly exceeding the sum of Three Thousand ($3,000.00) Dollars, to-wit: $10,000.00 without due process of law and would be denied the equal protection of the laws in contravention of the Constitution of the United States.

Complainants are advised by counsel, and therefore aver and claim, that there is no remedy, except in this Court and in equity, to test adequately and completely the legality of said order of said Commission fixing rates and that in the absence of such remedy in this Court and in equity, the penalties provided in the said Act for violation of said order would be unreasonable and confiscatory and would deprive complainants of their property without due process of law and without just compensation, in contravention of the Constitution of the United States and of the Constitution of the State of Arizona, and would likewise deny to them the equal protection of the laws in contravention of the Constitution of the United States.

X.

That as heretofore alleged complainants requested of said The Arizona Corporation Commission a suspension of the operation of said order, effective on May 25th, 1914, for the express purpose in

said request so set forth, that they might have the opportunity under the laws of the State of Arizona, without the possibility of incurring the unjust, excessive and unconstitutional fines and penalties sought to be imposed upon them, of appearing in the Courts of the State of Arizona for the purpose of reviewing the order so made by said The Arizona Corporation Commission and of testing and seeking a determination in the state cou-ts of the constitutional right, power and authority of said The Arizona Corporation Commission to institute the proceedings before said Corporation Commission, designated as "Docket No. 69, Sub. 1" or to make an order therein but that said Corporation Commission, not-
23 withstanding said request as hereinabove shown and set forth, and notwithstanding no means or remedy are by the laws of the State of Arizona afforded to complainants to enforce the granting of such request, denied said request and subjected complainants to the hazard and possibility of the imposition of the fines, penalties and imprisonment in said statute provided as a penalty for the disobedience of said order, in the event the proceedings taken by complainants in the state courts should be unavailing. By reason of such refusal on the part of said Corporation Commission to suspend the operation of said order so as to permit complainants to take such action as might by them be deemed necessary and expedient for the purpose of reviewing said order and testing the right, power, authority and jurisdiction of said Commission to institute said hearing, designated as "Docket No. 69, Sub. 1," or to enter an order therein, complainants have been and are obliged to institute this proceeding and for this reason, in addition to the reasons heretofore set forth, have brought this, their bill of complaint in this Court to assert rights which except for the provisions of said Act 90 and the Act of said Corporation Commission, might otherwise be asserted by complainants in the state courts.

By reason of the matters and things hereinbefore set forth, it is apparent and complainants allege that they have not a plain, speedy or adequate remedy at law or any remedy whatsoever in the courts of the State of Arizona to protect them in the lawful possession and use of their property or in the exercise of their lawful rights in respect to the business so by Ida A. Van Dyke conducted as an individual and not as a water corporation or a public service corporation owning, controlling, operating and managing a water system for compensation in the town of Miami, State of Arizona, in the distribution, delivery and selling of water for domestic, commercial and fire uses in said town, and that they will be unjustly and unlawfully deprived of their property and of their lawful rights and use thereof, to their great and irreparable damage, and that in this Court alone can the rights of complainants in the premises be adequately and justly determined and protected.

24 XI.

That said order of said Commission, effective on the 25th day of May, 1914, will cause irreparable damage to complainants unless the operation thereof is enjoined and restrained by this Court pending

the trial of the issues herein presented; and complainants are informed and believe and upon such information and belief allege that unless a temporary restraining order and injunction pendente lite be granted and issued our of this Court said The Arizona Corporation Commission will order and direct defendant, George P. Bullard, Attorney General aforesaid or Norman J. Johnson, County Attorney of Gila County as aforesaid, to commence proceedings against complainants to enforce the fines and penalties hereinabove mentioned under the provisions of said Act 90, and that it is the expressed intention of said Commission to require said defendants last above named to enforce and impose said fines and penalties.

In consideration whereof and for as much as complainants have no adequate remedy at law and have relief only in courts of equity where such matters are peculiarly cognizable, your complainants pray:

First. The defendants, W. Paul Geary, Amos W. Cole and Frank A. Jones, Commissioners constituting The Arizona Corporation Commission of the State of Arizona and each of them and their successors in office and The Corporation Commission of the State of Arizona and George P. Bullard, Attorney General of the State of Arizona and his successors in office and Norman J. Johnson, County Attorney of Gila County and his successors in office, be temporarily and permanently enjoined and restrained from in any manner whatsoever enforcing or attempting to enforce the conditions of said order dated May 1st, 1914; from instituting or authorizing or directing the institution of any suit or suits, action or actions against complainants, Ida A. Van Dyke and Cleve W. Van Dyke, their
25 agents or employees for the recovery of any penalties under and by virtue of the provisions of Chapter 90 of the Session Laws of 1912 of the State of Arizona, known as the Public Service Corporation Act of the State of Arizona, arising out of or in any manner connected with the decision of said Commission dated May 1st, 1914, and that the said defendants and their respective successors be temporarily and permanently enjoined from furnishing to any person whatsoever information of any character for the purpose of inducing or enabling such person to institute or prosecute any suit or action against complainants or either of them, their agents, or employees, for the recovery of any penalty or penalties arising out of or connected with said order of said Commission.

Second. That the order of said Commission of May 1st, 1914, made and issued by said defendant W. Paul Geary, Amos W. Cole, and Frank A. Jones, members of the Corporation Commission of the State of Arizona as set forth in this complaint be declared to be unreasonable, unfair and unjust and that said order be cancelled and be declared to be null and void and of no effect and in contravention of the provisions of the Constitution of the United States and of the Constitution of the State of Arizona.

Third. That the complainants have such other and further relief herein as may be just and equitable and as to this Court may seem meet, and that they have their costs in this action as against defendants herein.

And may it please Your Honors to grant unto complainants a writ of subpœna of the United States of America issued out of and under the seal of this Honorable Court, directed to the said defendants, commanding them and each of them upon a day certain therein to be named, and under a certain penalty, to be and appear before this Honorable Court, then and there to answer, but not under oath, (answer under oath being hereby expressly waived) all and singular the premises, and to stand to, perform, and abide by such order, direction and decree as may be made against them in the premises, and that pending the final hearing of this cause a temporary re-
26 straining order and a temporary injunction herein may be issued as above prayed, and complainants will ever pray.

IDA A. VAN DYKE,
CLEVE W. VAN DYKE,
Complainants.
By GEORGE J. STONEMAN,
REESE M. LING,
406 *Goodrich Bl'k, Phœnix, Arizona;*
F. C. JACOBS,
Globe, Arizona,
Attorneys for Complainants.

27 DISTRICT OF ARIZONA,
State of Arizona, County of Gila, ss:

Ida A. Van Dyke and Cleve W. Van Dyke being each duly sworn upon oath say that he resides in the town of Miami, County of Gila, State of Arizona; that he has read the foregoing amended bill of complaint, knows the contents thereof and that the same is true of his own knowledge, except to the matters therein stated to be alleged upon information and belief and as to those matters he believes it to be true.

IDA A. VAN DYKE.
CLEVE W. VAN DYKE.

Subscribed and sworn to before me this 31st day of July, 1914.
[SEAL.] M. BLEDSOE,
Notary Public in and for Gila County, State of Arizona.

My Commission Expires Feb. 19, 1916.

28 EXHIBIT A.

Before Arizona Corporation Commission.

Docket No. 69, Sub. 1.

ARIZONA CORPORATION COMMISSION, Complainants,
vs.
GRANITE SPRINGS WATER COMPANY, Inc.; C. W. VAN DYKE and I. A. VAN DYKE, Respondents.

Complaint.

Now comes Arizona Corporation Commission, the complainants herein, and upon its own motion, complains against Granite Springs Water Company, Inc., C. W. Van Dyke and I. A. Van Dyke, the respondents herein, and alleges as follows:

I.

That the complainant is the duly elected, qualified and acting Corporation Commission of the State of Arizona; that the respondents are the owners of a water corporation situated in the Town of Miami, State of Arizona, and are doing business as a public service corporation in distributing, delivering and selling water for domestic, commercial and fire use in said Town of Miami.

II.

That the said respondents charge and collect for water delivered by them for said domestic, commercial and fire use, to consumers residing in and about said Town of Miami, rates according to the following schedule, to-wit:

Flat Rates per Month.

Family	$2.50
Lodging houses per room	.50
Single persons in tents, etc	1.00
Store	2.50
Office	2.50
Restaurant	5.00
Market	2.50
Barber shop per chair	1.00
Barber shop per bath tub	1.00
Bath tubs	1.00
Shower baths	1.50
Saloons	5.00
29 Saloons with pressure attachments	7.50
Livery Stables & Corrals, Minimum	15.00
Soda Fountains	5.00
Laundry, minimum	5.00

Flush closet	1.00
Horse or Cow	1.00

(Sprinkling rate to be made at the office of the Co.)

Water for cement building and special uses made on application.

Meter Rates.

First 1,000 gallons	$3.50
Succeeding 4,000 gallons	3.25
Next 5,000 gallons	2.50
10,000 to 20,000 gallons	2.00
Above 20,000 gallons	1.50

III.

That said rates and charges and each of them are excessive, unreasonable and unjust.

IV.

That the services and classes of service rendered by said respondents to consumers of water in the Town of Miami, are inadequate, unsatisfactory and uncertain.

Wherefore, the complainant prays that the present rates made, charged and collected by the respondents herein, as herein alleged and set forth, be deemed excessive, unreasonable and unjust, and that such rates be made and installed in lieu thereof as shall be deemed just and reasonable; that said respondents be compelled to render adequate, satisfactory and sufficient service to its consumers; that a full and complete investigation be had of rules and regulations of said respondents; and for such other order in the premises as may be deemed reasonable and just.

ARIZONA CORPORATION COMMISSION,
W. P. GEARY, *Chairman;*
A. W. COLE, *Commissioners.*

Dated at Phœnix, this 17th day of October, 1913.

Attest:
FRANK DE SOUZA,
[SEAL.] *Secretary.*

30

EXHIBIT B.

Before Arizona Corporation Commission.

Docket No. 69, Sub. 1.

ARIZONA CORPORATION COMMISSION, Complainants,
vs.
GRANITE SPRINGS WATER COMPANY, INC.; C. W. VAN DYKE, and I. A. VAN DYKE, Respondents.

Plea in Bar.

Come now C. W. Van Dyke and I. A. Van Dyke, two of the respondents above named, through their attorneys, Messrs. Stoneman & Ling of Phœnix and F. C. Jacobs of Globe and plead that plaintiff herein, the Arizona Corporation Commission is barred and estopped from asserting or attempting to assert any right, power or authority or jurisdiction over these defendants or either of them and this plea is based upon the following grounds, to-wit:

I.

That these respondents and each of them allege that at all times in this plea in bar mentioned, they have been and now are natural citizens of the United States and during all the time in the complaint hereinafter mentioned they were and now are citizens of the State of Arizona.

II.

These respondents and each of them allege that they are not the owners of a water corporation in said complaint termed the Granite Springs Water Company, Inc., nor are they the owners of any water corporation whatsoever, situated in the town of Miami or elsewhere engaged in doing business as a public service corporation in distributing or delivering or selling water for domestic, commercial, and fire use in said town of Miami, or elsewhere and allege that they are not acting as a corporation under the laws of the State of Arizona or any other State or at all.

31

III.

Allege that the said I. A. Van Dyke is and has been ever since the 28th day of November, A. D. 1911 sole owner of certain real property located in Gila County, State of Arizona and adjoining the town of Miami in said County upon which is situated three wells of water, designated as the Granite Springs and also the owner of water mains, wells, engines, pumps, tanks, reservoirs, meters, hydrants, buildings, rights, franchises and easements connected with the said wells and extending through the said town of Miami and is and has been continuously for a long time prior to the filing of

the complaint herein, engaged in the distribution and selling of water to the inhabitants of the said town of Miami for domestic, commercial and fire uses.

IV.

That the said I. A. Van Dyke is a natural person and is not an artificial person, a corporation, an association, a joint stock company or a co-partnership and said water so sold and distributed as herein above alleged was and is sold and distributed by the said I. A. Van Dyke as an individual and as a natural person.

V.

These respondents further allege that the Arizona Corporation Commission is without right, power, authority or jurisdiction to investigate or control or seek to investigate or control the business of these respondents or either of them so owned by the said I. A. Van Dyke personally and conducted as herein above in this pleading set forth for the reason that the power, jurisdiction and control given to the Corporation Commission under the provisions of Section 2 of Article 15 of the Constitution of Arizona is limited to the control and supervision of "all corporations engaged in * * * furnishing water for irrigation, fire protection or other public purposes," which corporation, among others as above defined, is by the constitution deemed to be a public corporation;

That the Arizona Corporation Commission is without
32 power, authority, or jurisdiction to entertain or prosecute this hearing or investigation under the provisions of Chapter 90 of the laws of the First Legislature of the State of Arizona for the following reasons to-wit:

That the Constitution of the State of Arizona limits the right to exercise such supervision and control by complainant over certain public service corporations among which is specifically mentioned water corporations;

That the meaning of the term "water corporations" as used in the Constitution is the ordinary and generally accepted meaning of the term and is an exclusion of the right to extend the meaning and definition of the term "water corporations" so as to include "persons, their lessees, trustees, receivers or trustees," and that said act of the Legislature in so far as it is sought to extend the jurisdiction of the Arizona Corporation Commission over persons, their lessees, trustees, receivers or trustees, owning, controlling, operating or managing any water system for compensation within the State of Arizona is unconstitutional, null and void and of no force and effect.

VI.

These respondents further allege that the modification and reduction of rates and charges made and charged and collected by the said I. A. Van Dyke for the sale and distribution of water in the said town of Miami would be and is the taking of rights, interests and property of the said I. A. Van Dyke without her consent and is

a derogation of a common right and is a violation of the Fifth Amendment of the Constitution of the United States providing that no person shall be deprived of property without due process of law;

VII.

These respondents further allege that said statute is invalid because it violates the provisions of the Fourteenth Amendment of the Constitution of the United States in denying to defend-
33 ants the equal protection of the laws and because it tends to deprive a person of property without due process of law;

That the said Chapter 90 of the laws of the First Legislature of the State of Arizona, in so far as the same purports to confer jurisdiction and power upon the Corporation Commission to supervise and control individual persons engaged in public service within the State of Arizona, is unconstitutional, void and of no force and effect whatsoever for the reason that said Chapter 90 was not passed and approved as provided by the Constitution of the State of Arizona.

Wherefore, respondents pray that in accordance with the law and practice and proceedure covering the determination of the sufficiency of the facts pleaded in bar of the alleged cause of action set forth in the complaint herein pending an investigation of the facts in said complaint, an order be made and entered by the Arizona Corporation Commission fixing a time and place at which these respondents may be permitted to make proof of the allegations contained in this plea in bar; and that *the* upon the hearing of the facts set forth herein that the Arizona Corporation Commission, plaintiff herein, make an order sustaining the plea in bar and dismissing the alleged cause of action set forth in the complaint herein.

34 EXHIBIT C.

Before Arizona Corporation Commission.

Docket No. 69, Sub. 1.

ARIZONA CORPORATION COMMISSION, Complainants,
vs.
GRANITE SPRINGS WATER COMPANY, INC.; C. W. VAN DYKE, and I. C. VAN DYKE, Respondents.

Opinion and Order.

Appearances:

Geo. P. Bullard, Attorney General, for Arizona Corporation Commission.

Stoneman & Ling and F. C. Jacobs, for Respondents.

Neil M. Alred, for certain consumers.

Pursuant to notice duly given, this cause came on regularly for hearing at Miami, Arizona, on the 11th day of December, 1913.

1. Such hearing included within its scope all evidence appertaining to the matters and things alleged in the complaint herein and in addition thereto a full and complete investigation was made by the Commission covering:

a. Quality and reliability of the supply;

b. Organization and business conduct of the plant;

c. History and development of the property;

d. Present financial conditions, books and records.

2. A valuation of the plant and property of the Respondents was made by the Engineer of the Commission.

3. Operating expenses were analyzed in detail over a period of one year for the purpose of determining therefrom what in the judgment of the Commission would prove to be a fair and equitable allowance for such operating expenses.

4. The pumpage, character and type of equipment used in pumping and distribution of the service have been closely examined and the amount of losses, determined as closely as the meagre records of the Respondents permitted. This had been taken into consideration in the rate investigation covered by this record.

5. An order which will be referred to throughout this opinion from time to time will be made governing the charges to be made the various classes of consumers now served.

On account of existing local conditions and circumstances warranting additional investigation, after an opportunity has been afforded of observing the means, methods and results exercised and secured by the Respondents under the general supervision of the Commission, such order will be tentative in nature allowing future review of the results obtained thereunder.

History.

The plant supplying the townsite of Miami with water is of recent origin.

The first work was done in 1909, shortly after the completion of the railroad extension from Globe, when a well was dug inside the townsite limits.

This well proved to be a failure and another well was developed later in 1909. The supply in this well was inadequate to meet growing demands, a condition remedied however by the digging of drifts out into the channel.

Lines were extended to meet the rapid growth of the town, the pumping capacity was augmented and storage tanks erected, on Inspiration Hill, thus developing the system that existed at the time of the investigation and examination of the plant by the Commission's Engineer.

Through drought or other reasons the supply in the main well proved inadequate at about the time of the hearing and a new source of supply was brought into service at a point some distance above at a place designated as the Stevens Well and the necessary

pumping equipment was erected, while at the original or
36 lower well electric motors were installed to replace the old gas engine against the time when water in sufficient quantities might again be supplied. Some considerable discussion has ensued relative to the ownership of the plant. The weight of all testimony apparently shows that I. A. Van Dyke is the sole owner thereof and is doing business as a public service corporation in distributing, delivering and selling water for domestic, commercial and fire use in the Town of Miami. Throughout this opinion and order whenever the word Respondents, Water Company, etc., are used the same shall be deemed to be and mean I. A. Van Dyke.

Physical Valuation.

An inventory and appraisal of the physical equipment of the Water Company was made by the Engineer of the Commission and introduced at the hearing herein.

Such valuation was developed by the methods customarily employed by the Commission, due consideration being given the effect of local conditions on prices, and the final valuation is the summation of a minutely detailed analysis of the entire water system excepting real estate the value of which was determined by the testimony of local property owners and real estate brokers.

In the estimate of values the Engineer of the Commission included therein all amounts deemed necessary for "piece meal" construction and "general contractors' profits."

The financial history of the Water Company, though fragmentary, is sufficient to demonstrate that construction was of a decidedly "piece meal" character.

In fact, the lack of funds during certain periods of growth resulted in an extravagant method of retail buying which would cause the book value of the plant to be in excess of a fair reproduction value, even though the plant is young and unit costs have not had time to materially alter or change.

Unfortunately no comparisons of value can be made because it is impossible to develop the book value or the historical value from the Company's records.

37 It is the endeavor of this Commission to produce a valuation which is fair and reasonable with due allowances made for the vicissitudes undergone by the plant during its formative period, but it was presumed that funds would be forthcoming in amounts sufficient to enable the Company to enjoy reasonable discounts even under "piece meal" construction.

No.	Description.	Rep. value.	Total dep'r.	Pres. value.
1.	Real Estate.....	$750.	$.....	$750.
2.	Buildings	2,132.	81.	2,051.
3.	Furn. & Fixt.....	570.	57.	513.
4.	Plant Equipment....	3,627.	411.	3,216.
5.	Pipe Lines.....	13,354.	1,575.	11,779.
6.	Meters	1,090.	170.	920.

7.	Water Storage.....	960.	82.	878
8.	Oil Storage.....	15.	2.	13
9.	Wells	9,943.	597.	9,346
10.	Stores and Supplies...	1,048.	.....	1,048
11.	Sta. & Printing.....	100.	.....	100
12.	Miscellaneous	563.	114.	449
		$34,152.	$3,089.	$31,063

The above table is a summary of the Commission's valuation with the classification customarily used to facilitate the computation of depreciation and the basis for the calculation of certain elements of value that are to be allowed in addition to the inventory totals.

Classes number- 2 and 4 include allowance for the Stephens Well and items of pumpin- equipment ommitted in the original valuation as will be explained in the description of "Water Supply Sources."

Real Estate.

It was developed at the hearing that the five acres originally allowed by the Engineer for the Commission was inadequate, since the lower well had failed and an auxiliary supply was being delivered from the upper or "Stephens" well, and it is our opinion that a fair allowance for Real Estate should include the reproduction value of five acres at the Stephens well.

The contention of the Company that the hills forming the banks of the main stream and small tributary gulches should be included in the valuation on the ground that such hills divert water into the main channel is not considered by this Commission. No
38 effort of the Company could prevent water being so diverted and it seems that the snowbanks of the Pinal mountains or the clouds could attain the same elements of value. The Company offered no direct evidence as to the value of real estate and the testimony of witness Mackey appears not to have been controverted.

Buildings.

The pumping plant and warehouses are constructed of corrugated iron on wooden frames and form inexpensive though substantial structures.

Furniture & Fixtures.

It is difficult to segregate the furniture and fixtures as distinct and apart from the property of the other activities conducted by the general townsite Company.

In the valuation all property used exclusively by the Water Company was included, and such an amount in addition thereto as seemed reasonable, the result being influenced to a certain extent by similar allowances made in other cases by this Commission.

Plant Equipment.

Prior to the installation of the electric light plant at the pumping station, water was pumped by a star and a Myers pump and discharged into two suction tanks of a total capacity of ten thousand gallons. The power plant consisted of a 15 H. P. horizontal Fairbanks-Morse Engine, operated on distillate, equipped with a pulley on each end of the shaft, one driving the deep well pumps and the other driving the Rumsey pressure pumps.

About the time of the hearing an electric light plant was installed and electric energy became available for pumping. The motors were set in such a way as to leave the engine undisturbed, so that it comprises an auxiliary power plant.

From the suction tanks the water is pumped to storage tanks on Inspiration Hill by a 5½ inches x 8 inches Rumsey triplex pump. The Stover Gas Engine used for driving the pump at Stephens Well is included in this valuation, for rate making purposes.

39

Tools.

It has been heretofore held by this Commission that small shop and line tools are not properly includible in a valuation for rate making but should be taken care of by allowing the depreciation as a part of the operating expenses; this on the theory that tools became lost or broken in a short time and the expense of their replacement coming at frequent intervals is in the nature of operating expense.

Pipe Line Equipment.

The main line which serves as a transmission and distribution line is 4-inch standard black pipe. Laterals are 3-inch, 2½ inch standard black pipe and a few lines of 1-inch and ¾-inch galvanized pipe. Service connections are of 1-inch and ¾-inch galvanized pip-. A service connection consists of a saddle on the main in which is screwed a corporation cock, then pipe to the property line and a stop cock, at which point the consumer's service line begins unless there is a meter in which case this is sometimes attached directly back of the stop cock.

The town of Miami is fairly level and the streets are definitely located and regular. The pipe line therefore forms a more sym-etrical system than is ordinarily found in Arizona mining camps, and is buried to an average depth of 2½ feet.

Meters.

The town is not metered except in the cases of the large consumers. The meters are all five-eight- inch tridents and are carefully installed as regards freezing and breakage, many of these being located in the houses of customers.

Water and Oil Storage Devices.

The present water storage equipment consists of the two suction tanks, water in which is not available for use except when the Rumsey pump is running and the two tanks situated on Inspiration Hill. All these tanks are constructed of galvanized iron.
40 The total storage capacity on Inspiration Hill is 15,000 gallons.
A small steel tank serves as a distillate storage tank.

Water Supply Sources.

The well originally supplying the town with water consists of a shaft to the conglomerate bed rock and a long drift at the bottom out into the channel.

During the interval between the completion of the Engineer's report and the date of the hearing, the well failed and it became necessary to tap a new source of water supply at a point up stream, and make a corresponding extension of the transmission main. It was not necessary, however, to drill a well, as the interests distributing the water own the creek channel, including an auxiliary well known as the Stephens well, said Stephens well being capable of supplying water enough to meet the demand when used in addition to the flow of the lower well.

The cause of the temporary failure of the lower well is uncertain. A discussion of such is largely conjecture, and we have included both wells in the valuation.

Adequacy.

It is impossible to determine the adequacy of the system in the usual manner from statistical data at the office of the company, because no plant records have been kept.

An inspection of the plant, however, shows that the pumping equipment, at least, is adequate for the present needs and for a reasonable increase of demand in the future.

The same will be true as to water storage when a reservoir is completed on Inspiration Hill. The distributing system will, of necessity, be enlarged and extended from time to time, but as at present constituted is adequate to give good service. The record contains no specific complaints in regard to service, and no reason appears why it should not be satisfactory. As the residential district expands there will undoubtedly be a zone of low pressure, which will
41 necessitate the installation of an auxiliary tank at some higher level than Inspiration Hill.

The adequacy of the water supply has been questioned. We are of the opinion that the record would not justify a definite statement on this subject. It is true that the lower well failed for cause unknown, and both wells were supplying sufficient water through a period of drought, demonstrating the adequacy of supply.

Other Elements of Value.

It has been generally recognized by Courts and Commissions that engineers' claims for certain allowances in addition to the inventory valuation are sound and proper.

We believe that consideration should be given to those items generally designated as "overheads," and have included in the complete valuation for rate making percentages as follows:

Engineering and supervision	6 per cent.
Interest during construction	5 per cent.
Omissions, contingencies, legal expense, cost of organization	3 per cent.
Total	14 per cent.

The basis for the application of the above percentages is taken as the inventory value, less the allowance for real estate, stationery and printing and stores and supplies.

Due regard is given the fact that the Company is just emerging from the formative period of its existence, and the cost of the physical equipment in relation to the total cost might differ from such relation when sufficient time has elapsed to put the plant on an established basis.

Going Value.

Commissions and Courts have recognized a difference between the value of a water system in operation and the value of a system comprising identical physical equipment, but without consumers or business; in other words, the increment of value corresponding to the cost of establishing the system as a "going concern", the same
42 being entirely disassociated from any element of "good will."

In the case at bar we have no data from the accounts of the Company indicating the cost of establishing the system as a going concern, but the Company has given this item the consideration it seems to warrant.

Valuation for Rate Making Purposes.

In consideration of all investigations made herein we deem the sum of $40,105.00 to be the value of the plant for rate making purposes, as fully set forth in the following table:

No.	Description.	Rep.	Value.	Total.	Dep.	Pres.	Value
I.	Real Estate	$....	750	$...	$....	$....	$750
II.	Buildings	....	2,132	...	81	....	2,051
III.	Furn. & Fixt.	....	570	...	57	....	513
IV.	Plant equipment	2,711	....	264	....	....	2,447
IV.	Equip. Stephens well	916	3,627	147	411	769	3,216
V.	Tools not Incl.	....	....	...	....	....	....
VI.	Pipe lines	....	13,354	...	1,575	....	11,779
VII.	Meters	....	1,090	...	170	....	920
VIII.	Water Storage	....	960	...	82	....	878
IX.	Oil Storage	....	15	...	2	....	13
X.	Well—Lower	8,398	....	504	....	7,894	....
X.	Well—Stephens	1,545	9,943	93	597	1,452	9,346
XI.	Stores & Supplies	....	1,048	...	....	....	1,048
XII.	Sta. & printing	....	100	...	....	....	100
XIII.	Horse & Vehicles	....	....	...	....	....	....
XIV.	Miscellaneous	....	563	...	114	....	449
	Total		$34,152	...	$3,089	....	$31,063
	Less I, XI, & XII		1,898	...	....	....	1,898
			$32,254	...	....	....	$29,165
	14 per cent overhead		4,516	...	432	....	4,084
	Going value		1,613	...	155	....	1,458
			$38,383	...	....	....	$34,707
	Add I, XI, & XII		1,898	...	....	....	1,898
			$40,281	...	....	....	$36,605
	Working capital		3,500	...	....	....	3,500
	Total		$43,781	....	$3,676	....	$40,105

Depreciation.

In depreciating the physical equipment of the water system, no departure was made from the established straight line method. Each item was considered by itself in accordance with standard engineering practice as exemplified by Floy, Foster and others, and the result in each case was then expressed as per centum of the reproduction value of the item.

43 The weighted age is found to be 2.73 years by an average which in effect includes in its calculation the age of each individual dollar of the reproduction value.

This gives an average annual depreciation of 3 and 5-10ths per cent of the value of the depreciable property. We are therefore of the opinion that an allowance of 3½ per cent will produce a fund sufficient to meet all items of expense properly chargeable to depreciation.

Balance Sheets.

No balance sheet has been rendered and the books and accounts of the Water Company have not been balanced since December, 1910. The Auditor of the Commission, however, has made a complete check of one year's operating expenses.

Working Capital.

At the hearing the Company did not make a request for any fund to be used as working capital. It is the opinion of the Commission that such an allowance should be made, and we have allowed therefor the sum of $3,500.

Of this amount $2,000.00 is allowed to cover accounts receivable from consumers due to delays in prompt payment of bills. In addition to this it is necessary to have surplus cash on hand to allow a reasonable bank balance and the amount necessary to conduct business for a period of time averaging thirty days' service. Therefore we add $1,500.00 to the amount already allowed, making the total working capital $3,500.

Fair Rate of Return.

The Commission has taken into consideration the hazards and peculiar characteristics manifested in the Miami district, and we are of the opinion that a reasonable rate of return as exemplified in the local situation should not be less than 10 per cent. This per centage has been given consideration in arriving at what in our judgment should be applied to the valuation for rate making purposes.

44 Analysis of Income.

Every rate analysis must take for its basis, not only matters heretofore discussed, but also the fair cost for rendering service.

This latter may be estimated for the future by studying the costs experienced in the past wherever proper and possible to give consid-

eration to all elements of cost which may be properly altered for the future, or which may be omitted or added in the future on account of conditions now holding which were not experienced or met during the period covered by past costs.

This principle has been given consideration in the rate analysis herein, together with other calculations bearing upon the local situation, and the rates adopted have been those which survive the process of elimination.

Analysis of Operation.

We will review in a general way our analysis of the operating costs for rate *t*aking purposes.

An examination in detail of the book expenses has been made, and after a careful review of all data secured from the journals, ledgers, vouchers and other available records, a classification of the operating expenses has been secured.

All of these features have been used that we might determine what are fair and reasonable operating expenses to be considered in this rate analysis.

Fuel Cost.

At the time of the hearing the plant was being changed from the use of distillate engine to electrical energy.

The distillate cost for the year ending September 30, 1913, was $922.61, making the fuel cost high. It is to be assumed that the change in operating conditions by use of electric power will materially reduce this feature of the expense, otherwise it will be necessary to return to the old method of generating power or install new and economical machinery for such purpose.

45 ## Material and Supplies.

The expense- for the year ending September 30th, 1913, are shown in detail below:

Repairs to plant (material)	$177.83
Repairs to pipe line (material)	358.45
Lubricating oil	68.80
Freight and handling	155.49
Phone at well (rent)	48.00
Miscellaneous	91.95
	$900.52

Office Pay Roll.

The office force, in addition to handling the accounts of the Water Company, are likewise handling the office work of the Miami Telephone Company, Miami Townsite Company and Miami Electric Light Company.

For the year ending September 30th, 1913, the total expense was

$4,933.00, of which 50 per cent, or $2,466.50, was charged to the operation of the Water Company.

This expense includes the services of an Auditor at $1,800 per year, a Secretary at $1,800 per year, a Bookkeeper at $1,320.00 per year, a Cashier and Collector at $1,320.00 per year, a Porter at $300.00 per year, and extra clerk hire for a period of two months at $100.00 per month.

Office Supplies and Other Expenses.

The office supplies and expenses are also used jointly by the four companies under Office Pay Roll, and for the year ending September 30th, 1913, the total charge was $2,502.89, of which 50 per cent, or $1,251.44, was charged to the operation of the water system. The above mentioned expenses include the following detailed items:

1.	Miscellaneous expense	$85.00
2.	Telephone	72.00
3.	Office rent	1,800.00
4.	Stamps	86.25
5.	Stationery and printing	74.73
6.	Hauling garbage	60.00
7.	Western Union	85.56
8.	Watchman	49.50
9.	Donations—various	129.85
10.	Lights	60.00
		$2,502.89

46 Plant and Line Pay Roll.

The Water Company, in addition to regular repair men and pumpers has a Superintendent that at time- does a portion of pumping, line repair work, and plant repair work. His time has been distributed in the majority of cases to the proper accounting subhead, while at other times the records are such that a division could not be made.

The details of this expense for the year ending September 30th, 1913, is given below:

Pumping	$2,828.05
Repairing line	461.45
Repairing Plant	89.55
	$3,379.05

This expense includes the salary of the Superintendent at $5.50 per day, pumpers at $3.00 per day and laborers at various rates.

Taxes.

No mention has been made of an operating charge for taxes, and no consideration was given this item under the heading Operating

Expenses, for the year ending September 30th, 1913, as no expenditure was made during that period that was charged on the books of the Water Company. This item should be carried by the Water Company and, adopting the 1913 rate of $1.25 and applying it to a valuation of $40,105, the taxes are estimated to be $501.31.

Interest and Return.

The Commission has considered what would represent a fair and equitable income to the investor, and what in the judgment of the Commission should constitute a fair and equitable amount which consumers should contribute through rates.

The data, statistics and records introduced herein have been analyzed and due consideration given such evidence.

It is the judgment of the Commission that the Water Company be allowed $4,010.50 as interest and a fair return annually upon its tangible and intangible assets, as represented by the property on hand October 1st, 1913, and including the additions mentioned at the hearing.

47 Depreciation Reserve.

We have considered all matters bearing upon the question of depreciation and are of the opinion the allowance to be made in the rates annually as depreciation reserve should be 3½ per cent of the depreciable property, or the sum of $1,343.40.

Disposition of Interest—Return and Depreciation Reserves.

The $4,010.50 allowed annually as a fair return on the investment may be distributed by the Water Company to its owner, owners or stockholders at its discretion.

The depreciation reserve shall be treated as a separate account and shall not be distributed or disposed of in any way other than set forth in the uniform classification of accounts for water corporations, heretofore ordered by this Commission, wherein the disposal of and proper charges to a depreciation fund are defined.

Accounting.

Although the Company at the time of the audit and examination by the Commission has a Bookkeeper, Secretary and Auditor, the books had not been properly balanced for the period December 31st, 1910, to September 30th, 1913.

No balance sheet has ever been rendered. We believe that with money now expended for this class of work, the Company could secure not only competency in accounting, but also a reduction of operating expenses in this line.

Inasmuch as no system of cost accounting was maintained the Company did not know until the filing of the report of the Auditor of the Commission what the operating expenses were for a period of twelve months.

With the installation of the Commissions' forms of accounting

methods heretofore maintained by the Water Company will be corrected.

48 Allowable Expenditures.

It is our belief that the operating expenses heretofore enumerated and referred to, which should be adequate to operate the property under conditions to be experienced with good management, and which will be provided for in the rates ordered herein are as follows:

Fuel cost	$922.61
Material and supplies	900.52
Office expenses	2,466.50
Office supplies and other expenses	1,251.44
Plant and line pay roll	3,379.05
Total	$8,920.12

The Water Company should reduce operating costs. In the event any increase of operating expenses result from rates charged by the Electric Company for power, an order of this Commission will issue directing a change in the operation from electric energy to distillate.

Existing Rates.

The complaint filed by this Commission contained the schedule of rates in force and effect.

A meter rental charge of fifty cents per month is maintained.

The metered consumers are in the great majority of cases served under what are termed "Domestic service meter rates," whereby the first 1,000 gallons or fractional part thereof are charged $3.50, irrespective of the quantity consumed. Quantities from 1,000 to 5,000 gallons are sold at the rate of $3.25 per M gallons; from 5,000 to 10,000 gallons, at $2.50 per M gallons; from 10,000 to 20,000 gallons at $2.00 per M gallons; over 20,000 at $1.50 per M gallons.

Sprinkling rates are made at the office on application. In
49 addition the following flat rates per month are in effect:

Family	$2.50
Lodging houses, per room	.50
Single person in tent	1.00
Store	2.50
Office	2.50
Restaurant	5.00
Market	2.50
Barber shop, per chair	1.00
Barber shop, per bath tub	1.00
Bath tubs	1.00
Shower baths	1.50
Saloons	5.00
Saloons with pressure attachment	7.50
Livery stables and corrals, minimum	15.00

Soda fountains	5.00
Laundry, minimum	5.00
Flush closet	1.00
Horse or cow	1.00

Water rates for cement buildings and special uses made upon application therefor.

Fire Protection.

Water for fire protection is furnished by the Company without charge being made therefor.

In the opinion of the Commission, the Water Company should receive a return for this service, but as Miami is not an incorporated town, the amount charged for this service would have to be subscribed voluntarily or paid by the Townsite Company.

Service Charge and Minimum Bill.

Practically all fair and equitable rates established by Commission have given consideration to those general charges and we shall not make any detailed analysis of the same nor the principles involved therein.

It is apparent that the Company is compelled to undertake many expenses in order to serve its various classes of customers, regardless of any individual consumer in such classes using the commodity or varying quantities thereof.

Such expense incurred by these non-using consumers should not be placed upon other consumers taking service and who must yield the Company a fair rate of return above all reasonable operating expenses.

50 ### Service Cut-ins and Cut-outs.

Certain expenses are occasioned in certain instances on account of discontinuing water service to facilitate the payment of bills, and such should be borne by the person causing same. This class of expense is the direct outgrowth of the consumer causing same and should be assessed accordingly. We deem the average cost of this item in Miami to be approximately $1.00 in each case, and on the basis of apportioning costs $1.00 should be charged against each consumer occasioning discontinuance of service by reason of non-payment of bills and applying for and receiving resumption of service.

Rates.

After a full investigation tables have been prepared showing the effect of the proposed rates as compared with present rates. Consideration has been given increased earnings accruing from the Cut-in and Cut-out charge, as well as income from the Minimum Bill.

The income from meter rentals is small and has no material effect upon gross income. No evidence was introduced by the Company showing the equity of a meter rental charge or that it should

be maintained. The orders and findings of this Commission in other cases demonstrate our unwillingness to permit such charge. A careful review of the flat rates shows that in a number of cases the rates are high as compared with the new meter rates and we are making the following adjustment.

	Per month present.	Per month proposed.
Family rates	$2.50	$2.00
Office	2.50	1.50
Bath tub, other than public	1.00	.50
Flush closets, other than public	1.00	.50
Horse or cow	1.00	.50
Livery stables and corrals	15.00	7.50

Saloons with pressure attachments should be placed on a meter basis, and this item has been omitted in the revised schedule of flat rates.

51 Effect of Proposed Rates.

The proposed rates ordered herein have been applied to the operations herein reviewed, and a comparison drawn between the effect of the proposed rates as against the corresponding effect of the present rates.

The result of such comparison may be reviewed in a general way as follows:

Earnings under Old Rates.

	One year.
Flat rates	$14,517.35
Meter rates	

	No. consumers.	Gallons used.	Amount.
1,000 gallons or under	44	26,990	$154.00
1,000 to 2,000 gals.	119	175,050	598.66
2,000 to 5,000 gals.	242	802,520	2,668.69
5,000 to 10,000 gals.	162	1,152,750	3,529.88
10,000 to 20,000 gals.	89	1,238,910	3,278.82
20,000 gals. and over	19	524,700	1,148.05
	675	3,920,920	$11,378.10

Total income $25,895.45

Estimated Earnings under Proposed Rates.

	1 year.
Flat rates	
(Old flat rate earnings)	$14,517.35

Deductions:

Minimum reduced, $3.50 to $1.50	$90.00
Meter rentals—eliminated	498.00

Family rates—estimated	3,390.00	
Office—estimated	240.00	
Baths—estimated	120.00	
Flush closets—estimated	120.00	
Horse or cow—estimated	50.00	
Livery stables and corrals	180.00	
		$4,688.00

Meter Rates.

	No. consumers.	Gallons used.	Amount.
1,000 gals. or less	44	26,990	$66.00
1,000 to 2,000 gals.	119	175,050	250.00
2,000 to 5,000 gals.	242	802,520	1,030.92
5,000 to 10,000 gals.	162	1,152,750	1,364.04
10,000 to 20,000 gals.	89	1,238,910	1,370.64
Over 20,000 gals.	19	524,700	530.52
			$4,612.92

52 The total estimated revenue to be derived from the classified consumers for a period of one year is:

Flat rates	$9,829.35
Meter rates	4,612.92
Cut-ins	100.00
Fire hydrants (20@$1.00 per mo.)	240.00
Total income	$14,782.27

The total estimated expenses for a period of one year based upon the data herein are:

Operating expenses	$8,920.12
Depreciation reserve, 3½ per cent of $38,383	1,343.40
Ten per cent return on value of $40,105	4,010.50
Taxes (estimated)	501.31
Total	$14,775.33

In consideration of all data, records and evidence submitted herein, it is the decision of this Commission, and, it is hereby ordered:

1. That the Respondents constitute a water corporation, owning, controlling, operating and managing a water system for compensation in the Town of Miami, State of Arizona, and are doing business as a public service corporation in distributing, delivering and selling water for domestic, commercial and fire uses in said town.

2. That present and existing rates and charges and each of them made, maintained and collected by said Respondents are unjust, unreasonable and excessive.

3. That said present and existing rates shall be cancelled by the Respondents and the following rates, both flat and metered, installed in lieu thereof.

53

Flat Rates.

	Per month.
Family	$2.00
Lodging houses, per room	.50
Single person in tent, etc.	1.00
Store	2.50
Office	1.50
Restaurant	5.00
Market	2.50
Barber-Shop, per chair	1.00
Barber-Shop, per bath tub	1.00
Bath-tubs, public	1.00
Bath-tubs, other than public	.50
Shower baths	1.50
Saloons	5.00
Livery Stables & Corrals	7.50
Soda Fountains	5.00
Laundry	5.00
Flush Closets, public use	1.00
Flush closets, other than public	.50
Horse or cow (not in Livery Stables & Corrals)	.50

Meter Rates.

	Per M gallons.
1,000 gallons or less	1.50
Next 1,000 "	1.25
" 3,000 "	1.15
" 5,000 "	1.05
" 10,000 "	1.00
Over 20,000 "	.85

Minimum Bill (Meter Water only, and to be charged only when some quantity is used) 1.50

Fire hydrants—$1.00 per month per hydrant—to be charged Townsite Company.

Saloons with pressure attachments shall be placed on a meter basis.

4. No charge shall be made for meter rentals.

5. For each cut-in charge on account of non-payment of bills—$1.00.

6. No charge shall be made consumers or prospective consumers for connecting from the water main to the property line. This expense is to be paid by the Water Company and charged to the proper construction account.

7. The Respondents may demand a reasonable consumer's deposit not in excess of $5.00 for residence service, and not in excess of $10.00 for business service, from its consumers, and shall pay

interest thereon at the rate of 8 per cent, per annum to any consumer so depositing.

54 8. All service contracts now existing, between the Respondents and consumers, for water service, not in conformity with the provisions of this Order are hereby cancelled and annulled.

9. Bills should be paid by the 20th day of the month following the month for which bill is rendered and if unpaid after said date, the Respondents may discontinue service.

10. The suggestions contained in the opinion herein shall be adopted and enforced by the Respondents.

11. The decisions herein shall be the subject of future review and shall not be treated as res adjudicata.

12. This order shall be in full force and effect from and after the 25th day of May, 1914, and shall so remain until the further order of this Commission.

ARIZONA CORPORATION COMMISSION.
W. P. GEARY, *Chairman,*
A. W. COLE,
Commissioners.

Dated at Phoenix, Arizona, this 1st day of May, 1914.
Attest:
FRANK DE SOUZA,
Secretary.

55 EXHIBIT D.

Before Arizona Corporation Commission.

Docket No. 69, Sub. 1.

ARIZONA CORPORATION COMMISSION, Complainants,
vs.
GRANITE SPRINGS WATER COMPANY, INC., C. W. VAN DYKE, and I. A. VAN DYKE, Respondents.

Application and Motion of C. W. Van Dyke and I. A. Van Dyke for Rehearing of Opinion and Order.

Now comes C. W. Van Dyke and I. A. Van Dyke, two of the respondents above named, for themselves and by their attorneys, F. C. Jacobs, of Globe, and Messrs. Stoneman & Ling, of Phœnix, and make and file this application and motion for a re-hearing of the opinion and order heretofore made and entered in the above entitled matter on the 1st day of May, 1914, by the Arizona Corporation Commission.

This motion is made and based upon the following grounds, to-wit:

I.

That said opinion and order of said Corporation Commission is unlawful in this, to-wit: That the Arizona Corporation Commission

had and has no jurisdiction, right, power or authority to investigate, control or make any order, or seek to investigate, control or make any order affecting the business of either of these respondents, and especially the business of I. A. Van Dyke, by her personally conducted as a natural person in the distribution, delivery and selling of water for domestic, commercial and fire uses in the town of Miami, for the reason that said Corporation Commission is without right, power, authority or jurisdiction under the provisions of Section 2 of Article 15 of the Constitution of the State of Arizona or under the provisions of any act of the Legislature of the
56 State of Arizona, and particularly under the provisions of Chapter 90 of the Laws of the First Legislature of the State of Arizona, which said laws are also contained in the Civil Code of Arizona, to investigate, supervise or control, or attempt to exercise any supervision or control over the business of distributing, selling and furnishing water for irrigation, fire protection or other public purposes conducted by a natural person and not by a water corporation.

II.

That said opinion and order of said Corporation Commission is unconstitutional, null and void in this, to-wit: That said Act 90 of the Laws of the First Legislature of the State of Arizona, upon which their said opinion and order is made and based, in so far as said Act 90 attempts to confer upon the Arizona Corporation Commission the right, power, authority and jurisdiction to investigate, supervise and control the business of owning, controlling, operating or managing any water system for compensation within the State of Arizona, conducted by a natural person or persons, their lessees, trustees, receivers or trustees as distinguished from a water corporation, is unconstitutional, null and void and of no force and effect in that said Act attem-ts to enlarge and extend the meaning of the term "water corporation" as defined in the constitution of Arizona, so as to include persons, their lessees, trustees, receivers or trustees.

III.

That the provisions of said Act 90 of the First Legislature of the State of Arizona in so far as said Act attempts to extend the jurisdiction and control of the Arizona Corporation Commission over natural persons, their lessees, trustees, receivers or trustees, owning, controlling, operating or managing any water system for compensation within the State of Arizona is unconstitutional, null and void and in conflict with and in violation of the fifth amendment of the Constitution of the United States providing that no person
57 shall be deprived of property without due process of law, and is further unconstitutional, null and void in that it violates the provisions of the 14th amendment of the Constitution of the United States in denying to defendants and these respondents equal protection of the laws and tends to deprive them of property without due process of law, and is unconstitutional, null and void for the further reason that it is in conflict with and in violation of

Section 4 of Article 2 of the Constitution of the State of Arizona providing "that no person shall be deprived of property without due process of law;" that said Act 90 is unconstitutional, null and void and in conflict with and in violation of the Constitution of the United States, which provides: "No bill of attainder, ex post facto law or law impairing the obligation of a contract shall ever be enacted."

IV.

That said opinion and order of said Corporation Commission is unconstitutional, null and void for the reason that it tends to and does impair the obligation of certain contracts for the sale and distribution of water now in existence between I. A. Van Dyke, one of the respondents above named, and many persons, residents in and about the town of Miami, Gila County, Arizona.

V.

That said opinion and order of said Corporation Commission is further unlawful in this, to-wit: that said Act 90 of the First Legislature of the State of Arizona, in so far as it purports to confer upon the Arizona Corporation Commission the right, authority, supervision, control and jurisdiction to supervise and regulate the business of owning, controlling, operating and managing any water system for compensation within the State of Arizona, as provided under Subdivision X of Section 2 of said Act and so as to include any person or persons, their lessees, trustees, receivers — trustees
58 appointed by any court, so owning, controlling, operating or managing any water system for compensation within the State of Arizona is unconstitutional, null and void in this, to-wit:

a. That Subdivision X of Section 2 of said Act is in conflict with the provisions of Subdivision Z of said Section 2, and that said Subdivision X of said Section 2 is in conflict with Section 2 of Article 15 of the Constitution of the State of Arizona.

b. That Subdivision X of said Section 2 of said Act is unconstitutional, null and void in that it purports to confer upon the Arizona Corporation Commission jurisdiction, right, authority, supervision and control over natural persons, their lessees, trustees, receivers or trustees, appointed by any court, owning, controlling, operating or managing any water system for compensation within the State of Arizona, for the reason that the provisions of said Subdivision X are in conflict with Section 13 of Article 4 of the Constitution of the State of Arizona, which Section provides: "Every Act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void as to so much thereof as shall not be embraced in the title." the title of said Act being as follows:

"An Act—Relating to public service corporations, providing for the regulation of the same, fixing penalties for the violation thereof, and repealing certain acts; with an emergency clause,"

thereby excluding from its provisions, natural persons, their lessees

or trustees owning, controlling, operating or managing any water system for compensation within this State.

VI.

That said opinion and order of said Corporation Commission is unlawful in this, to-wit: That the evidence upon which said opinion and order is made and based is insufficient to justify the first section of said order, which reads as follows: "That the
59 respondents constitute a water corporation owning, controlling, operating and managing a water system for compensation in the town of Miami, State of Arizona, in distributing, delivering and selling water for domestic, commercial and fire uses in said town."

VII.

That said opinion and order of said Corporation Commission is unlawful in this, to-wit: That the evidence upon which said opinion and order is made and based is insufficient to justify that portion known as Paragraph 2 of said order, which reads as follows: "That present and existing rates and charges, and each of them, made, maintained and collected by said respondents are unjust, unreasonable and excessive."

VIII.

That said opinion and order of said Corporation Commission is unlawful in this, to-wit: That the rates installed in lieu of existing rates at the time of the investigation, which rates are specified in paragraph 3 of said order, are unjust, unreasonable and confiscatory in that said rates so prescribed and installed by said paragraph 3 of said order of said Corporation Commission will not produce sufficient income and revenue to enable the respondent, I. A. Van Dyke, to continue to furnish and supply the inhabitants of the town of Miami with water for domestic, commercial and fire uses at a profit, but will compel the said respondent, I. A. Van Dyke, to furnish said water at a loss.

IX.

That said opinion and order of said Corporation Commission is unlawful in this, to-wit: That paragraph 4 of said order which provides: "No charge shall be made for meter rentals," precludes the respondent, I. A. Van Dyke, from enforcing many contracts now in existence for the rental of said meters and said opinion and order is in violation of the Constitution of the United States and of Section 25 of Article 2 of the Constitution of the State of
60 Arizona, which provides: "No law impairing the obligation of a contract shall ever be enacted."

X.

That said opinion and order of said Corporation Commission is unlawful in this, to-wit: That paragraph 5 of said order, which provides: "For each cut-in charge on account of non-payment of

bills, $1.00," is unjust, unreasonable and not a sufficient charge for the service performed.

XI.

That said opinion and order of said Corporation Commission is unlawful in this, to-wit: That paragraph 6 of said order, which provides: "No charge shall be made consumers or prospective consumers, for connections from the water main to the property line; this expense to be paid by the Water Company and charged to the proper construction account," is an attempt on the part of the Corporation Commission to prevent the respondent, I. A. Van Dyke, from making and entering into contracts with consumers or prospective consumers for labor and services to be performed by said respondent, and said portion of said order is an unlawful interference with the rights guaranteed to the respondent under the Constitution of the United States and the constitution and laws of the State of Arizona.

XII.

That said opinion and order of said Corporation Commission is unlawful in this, to-wit: That Section 8 of said order which provides: "All service contracts now existing between the respondents and consumers for water service, not in conformity with the provisions of this opinion and order are hereby cancelled and annulled," for the reason that said Section 8 of said order is in violation of the Constitution of the United States and Section 25 of Article 2 of the Constitution of the State of Arizona, which provides: "That no law impairing the obligation of a contract shall ever be enacted."

61 XIII.

That said opinion and order of said Corporation Commission is unlawful in this, to-wit: That Section 10 of said order which provides: "The suggestions contained in the opinion herein shall be adapted and enforced by the respondents," is an unauthorized interference with the rights of the respondent, I. A. Van Dyke, inasmuch as the constitution of the State of Arizona does not authorize said Corporation Commission to make said order, and there is no valid law of the State of Arizona authorizing said Corporation Commission to make such order.

XIV.

That said opinion and order of said Corporation Commission is unlawful in this, to-wit: That the physical valuation of the real estate, buildings, furniture and fixtures, plant equipment, pipe lines, meters, water storage, oil storage, wells, stores, and supplies, stationery and printing and miscellaneous property, and each and every item of said property at the time of the investigation and making of said said Corporation Commission is less than the actual present value of said property at the time of the investigation and making of said opinion and order.

XV.

That said opinion and order of said Corporation Commission is unlawful in this, to-wit: That such valuation placed upon said property by said Corporation Commission is unlawful, unjust, unreasonable and confiscatory and does not represent the true value or the true, just and fair valuation of the property of the respondent, I. A. Van Dyke, for the purpose of rate-making or for any purpose whatsoever; that such valuation made by said Corporation Commission of the property of the respondent, I. A. Van Dyke, used and useful in the operation of said plant is unjustly and unreasonably low, and does not allow a return upon the investment; that such unlawful, unjust, unreasonable and confiscatory valuation
62 amounts to and is the taking of property for a public use without just compensation.

XVI.

That said opinion and order of said Corporation Commission is unlawful in this, to-wit: That no allowance is made in estimating the expenses of the conduct of the business of the respondent, I. A. Van Dyke, for the payment of any salary to the manager thereof.

XVII.

That said opinion and order of said Corporation Commission is unlawful in this, to-wit: That the estimate of the office expenses necessary in the conduct of the business of the respondent, I. A. Van Dyke, is entirely too low and insufficient to pay for the same, and that the estimate of the amount of money necessary to be expended for "over head" charges and expenses is entirely too low and is insufficient to meet and pay the actual necessary expenses thereof.

XVIII.

That said opinion and order of said Corporation Commission is unlawful in this, to-wit:

a. That no allowance of valuation is made by said Corporation Commission for a large area of real property owned by the respondent, I. A. Van Dyke, and necessarily used in connection with the water plant.

b. That no allowance was made by the Corporation Commission in estimating the value of the property and plant used by the respondent, I. A. Van Dyke, in connection with said water system, of any value of land forming the hills and banks of the main stream and small tributary gulches necessary to be included and forming the water-shed which diverts water into the main channel from which the water supplied by said plant is taken.

c. That the allowance of six per cent for "engineering and
63 supervision" is too low an allowance; that the allowance of five per cent. for the item "interest during construction" is too low an allowance; that the allowance of three per cent. for the item "Omissions, contingencies, legal expense, cost of organization"

is too low an allowance, and is less than the actual costs or amount of such items.

d. That no allowance is made by the Corporation Commission of any going value of the water plant or a valuation of said property as a going concern.

e. That the estimate of fourteen per cent., amounting to $4,084.00 as "over head" expense is entirely too low as the actual "over head" expense of operating and maintaining said plant is far in excess of said figure.

f. That the allowance of $3,500.00 made by said Corporation Commission as working capital is inadequate and insufficient as a working capital for said business.

g. That the allowance of three and one-half per cent. of reproduction value, as fixed by said Corporation Commission, is insufficient and inadequate for that purpose.

h. That the allowance of $3.00 per day for engineers or pumpers, as made by said Corporation Commission, is insufficient, inadequate and unjust in this, that such allowance is not sufficient to pay the union scale of wages necessary to be paid in the District of Miami for such service.

i. That the allowance of $501.31 as the yearly taxes on the property and plant of the said I. A. Van Dyke is an insufficient amount to pay said taxes.

j. That the allowance of $4,010.50 as the annual interest and return upon all tangible and intangible assets so allowed by said Corporation Commission is an insufficient, unjust and unreasonable allowance, and such sum cannot be obtained from the rates fixed and prescribed by said Corporation Commission for the sale and distribution of water by the respondent, I. A. Van Dyke.

64 *k.* That the allowance of $1,343.40 made by the Corporation Commission as annual depreciation reserve is an insufficient, unreasonable, inadequate and unjust amount.

l. That no enforcible allowance is made by the Corporation Commission for the payment to the respondent, I. A. Van Dyke, for water furnished for fire protection in the town of Miami.

XIX.

That said opinion and order of said Corporation Commission is unlawful in this, to-wit: That no allowance of any valuation of the land owned by the respondent, I. A. Van Dyke, in fee simple, in the said town of Miami and adjacent thereto where the pipe lines of said water plant are placed, and such value was not considered by said Corporation Commission in estimating the value of the property and plant of the water system owned by the respondent, I. A. Van Dyke.

XX.

That said opinion and order of said Corporation Commission is unlawful in this, to-wit: That no allowance of any valuation was made or taken into consideration, in estimating the value of the water plant of the respondent, I. A. Van Dyke, of a certain new

well and a drift therefrom being made, developed and constructed at the time of the hearing and investigation of the water plant of the respondent, I. A. Van Dyke, by said Corporation Commission.

Wherefore, these respondents pray that the order made and entered on the 1st day of May, 1914, by the Arizona Corporation Commission be vacated and set aside and that they be granted a rehearing upon the grounds set forth in this application and motion.

Respectfully submitted,

F. C. JACOBS,
STONEMAN & LING,
Attorneys for Cleve W. Van Dyke and I. A. Van Dyke.

65 EXHIBIT E.

Before Arizona Corporation Commission.

Docket No. 69, Sub. 1.

ARIZONA CORPORATION COMMISSION, Complainants,
vs.
GRANITE SPRINGS WATER COMPANY, INC.; C. W. VAN DYKE and I. A. VAN DYKE, Respondents.

Come now C. W. Van Dyke and I. A. Van Dyke, two of the respondents above named, by their attorneys, Messrs. Stoneman & Ling and Mr. F. C. Jacobs, and respectfully pray that the operation of the order heretofore on the 1st day of May, A. D., 1914, entered by the Arizona Corporation Commission in the above entitled matter be suspended for a period of sixty (60) days from the 25th day of May, 1914; this application is based upon the following grounds, to-wit:

That heretofore on the 12th day of May, 1914, your petitioners filed a motion for a rehearing of facts set forth in said order, which motion for a rehearing was thereafter by this Honorable Commission denied;

That it is the intention of your petitioners and there is now in the course of preparation proceedings for a review of said order to be had before the Superior Court of Maricopa County, and in connection therewith, a petition for a writ of injunction praying that this Honorable Commission be restrained from proceeding further in this matter because of the want of jurisdiction of this Commission to make such order;

That said petition and said proceedings will be lodged in the State Courts on or before the first day of June, 1914, and thereafter prosecuted to a final determination as speedily as may be;

Your petitioners are advised that unless the operation of said order is suspended they will, pending the determination of the
66 issues raised in the motion for a rehearing, be subject to a fine of not exceeding Five Thousand ($5,000.00) Dollars per day or by imprisonment for each day during which the petition for

a review of said order shall be pending and undisposed of, in the event your petitioners shall not pending the determination of the proper courts upon the issues raised and the contents of said order, waive the rights given them under the statute and notwithstanding their claim that this Honorable Commission has no right, power or authority to make said order, comply with the terms of said order;

That this application is made in good faith and not for the purpose of delay only, but that justice may be done and that your petitioners may avail themselves of the right purported to be given to them under the laws of this State without subjecting themselves to the possible extreme penalties imposed by the provisions of the laws of Arizona in the event they shall be unsuccessful in the prosecution of the Court proceedings above indicated.

Respectfully submitted,

CLEVE W. VAN DYKE AND
I. A. VAN DYKE,
By F. C. JACOBS,
STONEMAN & LING,
Their Attorneys.

Dated at Phœnix, Arizona, May 18, 1914.

Endorsements: Service admitted Aug. 3, 1914. G. P. Bullard, Att'y Gen'l. In the District Court of the United States in and for the District of Arizona. Ida A. Van Dyke and Cleve W. Van Dyke, Complainants, vs. W. Paul Geary, Amos W. Cole and Frank A. Jones, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona; and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants. In Equity No. E-2 (Globe). Amended Bill of Complaint. George J. Stoneman, Reese M. Ling, F. C. Jacobs, Solicitors for Complainants. Filed August 4, 1914. George W. Lewis, Clerk.

67 UNITED STATES OF AMERICA:

District Court of the United States, District of Arizona.

In Equity. E. 2 (Globe).

The President of the United States of America, Greeting to Paul W. Geary, Amos W. Cole, and Frank A. Jones, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona:

You are hereby commanded, that you be and appear in said District Court of the United States, Aforesaid, at the Court Room in Globe, twenty days from the date hereof, to answer a Bill of Complaint exhibited against you in said Court by Ida A. Van Dyke and Cleve W. Van Dyke, of the County of Gila, State of Arizona, and

to do and receive what the said Court shall have considered in that behalf.

Witness, the Honorable Wm. H. Sawtelle, Presiding Judge of said District Court, this 18th day of June in the year of our Lord one thousand nine hundred and fourteen and of our Independence the 137th.

[Seal U. S. District Court.] GEORGE W. Lewis, *Clerk*,
By EFFIE D. BOTTS, *Deputy*.

Memorandum Pursuant to Rule 12, *Rules of Practice for the Courts of Equity of the United States.*

You are hereby required to file your answer or other defense in the above suit, on or before the twentieth day after service, excluding the day thereof, of this subpœna, at the Clerk's Office of said Court, pursuant to said Bill; otherwise the said bill may be taken Pro Confesso.

GEORGE W. LEWIS, *Clerk*,
By EFFIE D. BOTTS, *Deputy*.

68 *United States Marshal's Return.*

Received this writ June 19, 1914, at Phœnix, Arizona, and executed the same June 19, 1914, at Phœnix, Maricopa County, Arizona, by delivering a true and certified copy hereof to W. Paul Geary, Amos W. Cole and Frank A. Jones, Members of the Corporation Commission of the State of Arizona, and to Frank De Sousa, Secretary of the Corporation Commission and to George P. Bullard, Attorney General of the State of Arizona, and to George W. P. Hunt, Governor of the State of Arizona, each personally.

Returned this 19th day of June, 1914.

J. P. DILLON,
U. S. Marshal,
By CHAS. R. PRICE, *Deputy*.

Marshal's fees for six services $24.00.

Endorsement: Marshal's Docket No. 405. Equity No. E-2 (Globe). In the District Court of the United States for the District of Arizona. Ida A. Van Dyke, and Cleve W. Van Dyke, Complainants, vs. W. Paul Geary, Amos W. Cole, and Frank A. Jones, Members of the Corporation Commission, of the State of Arizona; The Corporation Commission of the State of Arizona; George Purdy Bullard, Attorney General of the State of Arizona; and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants. Joint Subpœna. Filed June 20, A. D., 1914. George W. Lewis, Clerk, By Effie D. Botts, Deputy Clerk.

69 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,

vs.

W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Come now the defendants W. Paul Geary, Amos W. Cole and Frank A. Jones, Members of the Corporation Commission of the State of Arizona; the Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona; and Norman J. Johnson, County Attorney of Gila County, State of Arizona, in the above styled and numbered cause, and move the court to dismiss this cause for the following reasons:

I.

Because it appears from said bill that the jurisdiction of this court is dependent upon the existence of a federal question, and that it appears upon the face of the bill that the said suit does not really and substantially involve a suit or controversy involving a violation of, or dependent upon a construction of the Constitution and laws of the United States.

II.

Because the said bill of complaint does not state any matter of equity entitling complainants to the relief prayed for, nor are the facts, as stated, sufficient to grant any relief against these defendants.

70 III.

Because the said bill of complaint herein fails to show any lack of equity existing in said rate or any impropriety upon the part of the Corporation Commission in determining the same; the allegations in said bill being wholly speculative, uncertain and impossible of verification and the damage alleged in said bill of equity is so remote and uncertain that said allegations do not afford a sufficient reason for consideration of this cause by this Honorable Court.

IV.

Because the said bill of complaint herein fails to show any lack of equity in the order of the Corporation Commission complained of; the allegations in said bill being merely inferences and conclusions of law and not statements of such ultimate facts as entitle the complainants to the relief prayed for under their bill of complaint.

V.

Because it appears from the face of complainants' bill of complaint that complainants have a plain, speedy and adequate remedy at law.

VI.

Because the bill of complaint herein is contradictory and uncertain and indefinite and afford- this court no rule or basis of calculation for the purpose of determining the question as to wh-ther or not the rate complained of is a reasonable rate, in this—that said bill of complaint does not state the valuation of the property owned by complainants, nor the operating expenses necessarily incurred by complainants in the operation of their said property, nor the rate of return which complainants will obtain on the value of the property used and useful for water purposes under the rates prescribed by the order of the Commission complained of.

71 VII.

Because said bill of complaint does not state facts sufficient to constitute a cause in equity, entitling complainants to the relief prayed for in the complaint.

Wherefore, these defendants pray that complainants' bill be dismissed and that they take nothing by their cause of action, and that defendants may go hence without day and for their costs and disbursements in this action expended.

G. P. BULLARD,
Attorney General of the State of Arizona,
Appearing for Himself in Person and
as Solicitor for All of the Defendants.

Service accepted June 30, 1914.

GEORGE J. STONEMAN,
Of Counsel for Complainants.

Endorsements: E-2 (Globe.) In the District Court of the United States in and for the District of Arizona. Ida A. Van Dyke and Cleve W. Van Dyke, Complainants, vs. W. Paul Geary, et al., Defendants. Motion to Dismiss. Filed July 1, 1914. George W. Lewis, Clerk. By Effie D. Botts, Deputy.

72 In the District Court of the United States for the District of Arizona.

Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Affidavit of Cleve W. Van Dyke.

STATE OF ARIZONA,
County of Maricopa, ss:

Comes now Cleve W. Van Dyke, one of the complainants above named who being first duly sworn deposes and says:

That he is advised by his Counsel in this proceeding and believes and upon such information and belief avers that the questions raised in the bill of complaint filed in the above entitled Court wherein Ida A. Van Dyke and Cleve W. Van Dyke are complainants and W. Paul Geary, Amos W. Cole and Frank A. Jones, The Corporation Commission of the State of Arizona, George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona are defendants, have never been presented for determination in any cause of action in any of the Courts of the State of Arizona or in the Supreme Court of said State, and that there is not now pending in any of the Courts of this State, or in the Supreme Court of the State of Arizona, any cause of action wherein said questions are presented for determination; particularly as to the questions affecting the constitutionality of Act 90 in said bill of complaint mentioned and referred to at length in Paragraphs I to VI inclusive of said complaint; that this affidavit is filed by affiant in sup-
73 port of said complaint and for the purpose of being used in said proceeding.

CLEVE W. VAN DYKE.

Subscribed and sworn to before me this 17th day of June, A. D. 1914.

[NOTARY SEAL.]

M. C. WEAVER,
Notary Public.

Endorsements: Equity No. E-2 (Globe). In the District Court of the United States for the District of Arizona. Ida A. Van Dyke, and Cleve W. Van Dyke, Complainants, vs. W. Paul Geary, Amos W. Cole, and Frank A. Jones, Members of the Corporation Com-

mission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona; and Norman J. Johnson, County Attorney, Gila County, State of Arizona, Defendants. Affidavit of Cleve W. Van Dyke. Filed June 18, A. D., 1914, at 10:00 A. M. George W. Lewis, Clerk, by Effie D. Botts, Deputy Clerk.

74 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Affidavit of C. B. Loomis.

STATE OF ARIZONA,
County of Gila, ss:

C. B. Loomis being first duly sworn deposes and says: I am a citizen of the United States and a resident of the town of Miami, in the County of Gila, State of Arizona. That I am employed by the complainant I. A. Van Dyke in connection with the water system now owned and operated by the said I. A. Van Dyke, in the town of Miami, in the capacity of cashier. That as such cashier I am familiar with the books of account of the said I. A. Van Dyke and the accounts therein contained showing the number of users and consumers of water who purchase and consume water from the said complainant I. A. Van Dyke and the amounts of money paid to and collected by the said I. A. Van Dyke for the sale and distribution of water in and about the town of Miami, Gila County, State of Arizona. That I have examined the books of account of the said I. A. Van Dyke for the purpose of ascertaining the amount of the annual income of the said I. A. Van Dyke from the sale and distribution of water in and about the said town of
75 Miami. That the annual income of the said I. A. Van Dyke from the sale and distribution of water in and about the town of Miami, Gila County, Arizona, for the last preceding year ending May 1st, 1914, is the sum of Twenty-six Thousand Five Hundred Seven ($26,507.00) Dollars.

That I have examined the schedule of rates fixed and prescribed by the Arizona Corporation Commission by its order of May 1st, 1914, for the sale and distribution of water by the said I. A. Van Dyke, in and about the town of Miami, which said rates are set forth in exhibit "C" attached to complainants' bill of complaint

in the above entitled matter, and have made an estimate of th amount of money that will be derived and received by the said I A. Van Dyke by the sale and distribution of water under said rate and do hereby state that the annual receipts, revenue and incom of the said I. A. Van Dyke for the sale and distribution of wate under the said rates prescribed by the Arizona Corporation Com mission by its said order of May 1st, 1914, will be Ten Thousan ($10,000.00) Dollars per year less than the income and revenu derived from the sale of water by said complainant I. A. Van Dyk for the last preceding year ending May 1st, 1914.

C. B. LOOMIS.

Subscribed and sworn to before me this 15th day of June, A. D. 1914.

[NOTARY SEAL.] W. J. ELLERY,
Notary Public in and for Gila County, State of Arizona.

My Commission expires Jan. 7, 1915.

76 In the District Court of the United States in and for th District of Arizona.

In Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Member of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bul lard, Attorney General of the State of Arizona; and Norman J Johnson, County Attorney of Gila County, State of Arizona Defendants.

Affidavit of E. S. Davis.

STATE OF ARIZONA,
County of Gila, ss:

E. S. Davis being first duly sworn deposes and says: I am a citizen of the United States and a resident of the County of Gila State of Arizona. That I am employed by the complainant I. A Van Dyke in connection with the water system now owned and operated by the said I. A. Van Dyke, in the town of Miami, Gila County, State of Arizona, in the capacity of bookkeeper and as such bookkeeper am familiar with the accounts of persons who purchase and use water from the said I. A. Van Dyke.

That I have examined the books of the said I. A. Van Dyke for the purpose of determining the annual income and revenue of the said I. A. Van Dyke derived from the sale and distribution of water in and about the said town of Miami. That the annual income and revenue of the said I. A. Van Dyke from the sale and distribution of water in and about the town of Miami for the last preceding year

ending May 1st, 1914, was the sum of Twenty-six Thousand Five Hundred Seven ($26,507.00) Dollars.

77 That I have examined the rates fixed and prescribed by the Arizona Corporation Commission by its order of May 1st, 1914, to be charged by the said I. A. Van Dyke for the sale and distribution of water in and about the town of Miami, and after such examination do hereby state that the annual income and revenue of the said I. A. Van Dyke for the sale and distribution of water in and about the town of Miami, Gila County, State of Arizona, under the rates prescribed by the Arizona Corporation Commission in its said order of May 1st, 1914, will be Ten Thousand ($10,000.00) Dollars per year less that the income and revenue collected and received by the said I. A. Van Dyke under the rates now and heretofore charged by the said I. A. Van Dyke.

E. S. DAVIS.

Subscribed and sworn to before me this 15th day of June, A. D., 1914.

[NOTARY SEAL.] W. J. ELLERY,
Notary Public in and for the County of Gila, State of Arizona.

My commission expires Jan. 7, 1915.

78 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona; and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Affidavit of L. D. Van Dyke.

STATE OF ARIZONA,
County of Gila, ss:

L. D. Van Dyke being first duly sworn deposes and says: I am a citizen of the United States and a resident of Gila County, State of Arizona, and am employed by the complainant I. A. Van Dyke in connection with the water system now owned and operated by the said I. A. Van Dyke in and about the town of Miami, Gila County, State of Arizona, in the capacity of secretary. That I am familiar with the books of account of the said I. A. Van Dyke, showing the accounts of purchasers and consumers of water in and about the said town of Miami. That during the last preceding year end-

ing May 1st, 1914, the income and revenue of the said I. A. Van Dyke for the sale and distribution of water in and about the said town of Miami, amounted to Twenty-six Thousand Five Hundred Seven ($26,507.00) Dollars.

That I have examined the schedule of rates and charges fixed by the Arizona Corporation Commission in its order of May 1st, 1914, and have estimated the amount of income and revenue that
79 the said I. A. Van Dyke can and will receive from the sale and distribution of water in said town of Miami under the said rates prescribed by the said Arizona Corporation Commission.

That under said rates prescribed by the said Arizona Corporation Commission for the sale and distribution of water in and about the town of Miami by the said I. A. Van Dyke the revenue and income of the said I. A. Van Dyke from the sale and distribution of water in and about the said town of Miami, Gila County, Arizona, will be Ten Thousand ($10,000.00) Dollars less that her said revenue and income would be for the sale and distribution of water under the rates now and heretofore charged.

L. D. VAN DYKE.

Subscribed and sworn to before me this 15th day of June, A. D., 1914.

[NOTARY SEAL.] W. J. ELLERY,
Notary Public in and for Gila County, State of Arizona.

My Commission expires Jan. 7, 1914.

80 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona; and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Affidavit of Cleve W. Van Dyke.

STATE OF ARIZONA,
County of Gila, ss:

Cleve W. Van Dyke being first duly sworn deposes and says: I am a citizen of the United States residing at Miami, Gila County, State of Arizona. That I am manager of the water system now owned and operated by the complainant, I. A. Van Dyke, in the town of Miami, Gila County, State of Arizona, and I am familiar

with the property used and useful in connection with said water system and forming a part thereof. That I am familiar with the decision and order of the Arizona Corporation Commission made on the first day of May, 1914. That at the time of the investigation of the water system owned and operated by the said I. A. Van Dyke, by the said Arizona Corporation Commission, the said I. A. Van Dyke was engaged in sinking a well and running a drift on lands owned by the said I. A. Van Dyke and used and useful in connection with the water system and forming a part thereof. That said well and drift are completed and the said I. A. Van
81 Dyke expended in money, labor and property in sinking said well and running said drift the sum of about Two Thousand ($2,000.00) Dollars.

That the cost of sinking said well and running said drift was not considered by the said Arizona Corporation Commission in estimating the value of the water system of the said I. A. Van Dyke for the purpose of fixing the rates and charges for the sale and distribution of water as contained in said order of May 1st, 1914.

That I am familiar with the lands used and useful in connection with the said water system owned and operated by the said I. A. Van Dyke and forming a part thereof. That about two hundred and forty acres of land, a large portion of which forms a storage basin for water which flows from the mountains adjacent to Miami, together with the mountain slopes therefrom are used and useful and absolutely necessary as a part of said water system. That the said land is of great value, to-wit: about the sum of $38,400.00, and that the same was not considered by the Arizona Corporation Commission as a part of the water system of the said I. A. Van Dyke, and the value thereof was not considered or included by the said Arizona Corporation Commission as a part of the said water system of the said I. A. Van Dyke and the value thereof was not considered or included by the said Arizona Corporation Commission in estimating the value of the said water system for the purpose of fixing the rates for the sale and distribution of water by the said I. A. Van Dyke, which said rates are set forth in Exhibit "C" attached to complainant's complaint herein.

82 That the said I. A. Van Dyke is the owner of a water right near the town of Miami, Gila County, Arizona, of the value of about $20,000, used and useful in connection with said water system and that the said water right and the value thereof was not considered or included by said commission as a part of said water system for the purpose of fixing rates prescribed by its order on the 1st day of May, 1914.

That the said I. A. Van Dyke is the owner of a railroad spur near the town of Miami, used and useful in connection with the said water system and of the value of about five hundred ($500.00) dollars, and that the full value thereof was not considered or included by the said Arizona Corporation Commission as a part of the said water system for the purpose of fixing said rates.

CLEVE W. VAN DYKE.

Subscribed and sworn to before me this 15th day of June, A. D. 1914.

[NOTARY SEAL.] W. J. ELLERY,
Notary Public in and for the County of Gila, State of Arizona.

My Commission expires Jan. 7, 1915.

Endorsements: In the District Court of the United States in and for the District of Arizona. Ida A. Van Dyke and Cleve W. Van Dyke, Complainants, vs. W. Paul Geary, Amos W. Cole and Frank A. Jones, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona; and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants. In Equity No. E-2 (Globe). Affidavits. George J. Stoneman, Reese M. Ling, F. C. Jacobs, Solicitors for Complainants. Filed June 18, A. D., 1914, at 10 A. M. George W. Lewis, Clerk, By Effie D. Botts, Deputy Clerk.

83 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona; and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Affidavit of R. G. Thomas.

STATE OF ARIZONA,
County of Gila, ss:

R. G. Thomas, being first duly sworn deposes and says: I am a citizen of the United States and of the State of Arizona, and a resident of the town of Miami, County of Gila, State of Arizona; that I am a mining engineer and a graduate of Iowa State College in the State of Iowa; that I am quite familiar with the townsite of Miami Gila County, State of Arizona, and am at the present time engaged in running an engineering office in the said townsite; that I surveyed the townsite of Miami and certain additions thereto, and that I am throughly familiar with the land contained therein; that I am also familiar with the I. A. Van Dyke water system situated in the Miami Townsite and upon the land adjacent thereto and have surveyed said land used in connection with said water system; that I am familiar with the property used in connection with the said

I. A. Van Dyke water system, and necessarily used and
84 useful in connection therewith; that I am familiar with the real estate in the said Miami Townsite and the value of real estate adjacent thereto, and that I am particularly familiar with the value of the land used and useful in connection with the said I. A. Van Dyke water system and constituting a part of said system; that the land owned by I. A. Van Dyke and used and useful in connection with the said water system consists of various strips of land four feet in width through and upon which mains are laid and various strips of land two feet in width through and upon which the lateral pipes connected with said mains are laid, together with a few small strips of land reserved for future use in the laying of mains and lateral pipes, which land is situated within the Miami Townsite, additions thereto and land adjacent thereto owned by the said I. A. Van Dyke; that the land adjacent to said Miami Townsite, used and useful in connection with said I. A. Van Dyke water system and owned by the said I. A. Van Dyke, consists of 189.7 acres all lying in one body, and comprising a water basin for the collection and storage of water used by the I. A. Van Dyke water system, containing 60 acres in said basin and 129.7 acres of which land is used and useful in connection with said I. A. Van Dyke water system and owned by her, comprises a water shed, which water shed surrounds said water basin, beginning from level ground, rising back and constituting the said water shed; the water flows from this water shed into the water basin; the bottom of the basin is filled with sand; the water settles in this sand and is held and stored there, which constitutes the water supply of I. A. Van Dyke water system. On the easterly portion of the land last above described is situated one large well 75 feet in depth and of the dimensions of 5 ft. by 7 ft. in the clear, from which well a drift has been constructed 269 feet in length, and of the dimensions of 3½ ft. by
4½ ft. by 6 ft.; that northerly from said well another or
85 second well has been constructed which is 63 feet deep and of the dimensions of 4 ft. by 5 ft. in the clear, from which well a drift has been constructed 30 ft. in length and of the dimensions of 3½ ft. by 4½ ft. x 6 ft.; that westerly from said wells, and at a distance of about one mile a third well is situated which is 24 feet in depth and of the dimensions of 4 ft. by 5 ft. in the clear, from which well a drift has been constructed of about 60 feet in length and of the dimensions of 3½ ft. by 4½ ft. by 6 ft., which last well is known as the Stephens well; that the said wells are connected with the mains extending therefrom to and through the Miami Townsite and certain of its additions, and said mains are connected with laterals, which laterals connect with the consumers of water supplied by the I. A. Van Dyke water system. That a large portion of the land above mentioned comprising said water basin and said water shed is desirable land for residence purposes, and unless said land was owned and controlled by I. A. Van Dyke, the same would be settled upon by other parties, and residences would be erected thereon, and the same would be occupied by tenants, and the offal, refuse and excrement necessarily resulting

from such occupancy and residence would be deposited upon said land and would contaminate the water flowing into said basin and used and distributed by the said I. A. Van Dyke through said water system; that in order to prevent the use of said land for such residence purposes, it is absolutely necessary that the said land be owned and controlled by the said I. A. Van Dyke, and used by her in connection with said water system; that efforts have been made since said I. A. Van Dyke acquired said property, to establish a dumping ground for garbage and a cemetery thereon, and it was only by reason of the ownership and control of said land by the said I. A. Van Dyke and its use by her in connection with said water system that she was enabled to prevent the establishment of said garbage dump and cemetery thereon; that said Miami Townsite, and the
86 territory adjacent thereto is situated and located in the heart of a desert country; that water is hard to find and difficult to develop,—a great deal of the water that is developed is not potable and unfit for drinking purposes. Some of the water, because of its coming in contact with minerals, is impregnated with minerals and some of it contains a high percentage of sulphuric acid; that that portion of the property owned by I. A. Van Dyke, which constitutes the water basin and the water shed, produces a quantity of wholesome, potable water suitable for domestic uses; that said basin is the only water basin contiguous to the Miami Townsite where a sufficient quantity of potable water can be secured for domestic purposes in Miami Townsite; that because of this fact its ownership and control is a necessary portion of the water system; that the land comprising said water basin and upon which said wells are situated, is of the value of $57,000.00; that the land comprising said water shed is of the value of $16,720.00, making a total valuation of $73,720.00; that the Arizona Corporation Commission in its investigation of the property comprising the I. A. Van Dyke water system and fixing an estimate of the value thereof, failed to include or allow, and did not include or allow as a portion or a part of said water system, any of the land above described, save and except about ten acres thereof, upon which the first two wells above described herein are situated, and allowed as the value of said ten acres the sum of $750.00; that the balance of said land and the value thereof was not considered or allowed by said Commission in estimating the value of said plant; that the strips of land through and upon which the main and lateral pipes of the said I. A. Van Dyke water system are laid in the Miami Townsite and adjacent thereto, and the strips of land reserved for future use in the laying of mains and lateral pipes, is of the value of $43,884.34.
87 These values were secured by a very careful tabulation made as follows:

The rights of way for the water mains are four feet wide; the rights of way for the laterals are two feet wide. The value of the rights of way were determined upon the basis of the value of the abutting property, the amount of value of the abutting property being determined in all instances upon the basis of a valuation placed upon said property by the County Assessor for the year

1914; this method was used in all parts of the townsite with the exception of a proportionately small area in the western part of the Townsite. In this western portion the Assessor had failed to place a valuation upon this section in lots and blocks, but included the valuation of other property. Mr. L. F. Fletcher, a prominent real estate man of Miami, a man who is familiar with local values in the Townsite of Miami and surrounding country, was chosen to place a valuation based upon the assessed valuation of the lots and blocks in the Townsite, upon this portion of the town, and the value of the rights of way were secured in this portion of the townsite in that way. In securing the unit value, the number of square feet of the abutting property was determined and the assessed valuation placed thereon by the Assessor was determined by the number of square feet area. This unit value was then used as a factor in finding the value of the abutting right of way by multiplying the number of square feet in the abutting right of way by the unit value; the areas of the lots and the areas of the rights of way were determined by my own calculations; the values of the property were determined by the County Assessor and L. F. Fletcher.

That I have examined the report of the Arizona Corporation Commission on its investigation of the I. A. Van Dyke water
88 system and was present at said hearing, and was called as a witness at said hearing for the purpose of testifying as to the amount of land used and useful by the said I. A. Van Dyke water system, and the value thereof; that W. P. Geary, Chairman of the Corporation Commission, before whom said hearing was held, made the following statement: "There will be no valuation of water sheds ten miles out or one mile out," and refused to allow any valuation of land comprising the water basin and water shed, save and except the ten acres where the first two wells herein mentioned are located, the value of which the Commission allowed at $750.00; that the land comprising said water basin and said water shed was called to the attention of the Corporation Commission at said hearing, and a map thereof was presented, showing said land.

That I am familiar with a certain water right that is owned by I. A. Van Dyke; that I. A. Van Dyke has appropriated and claims perpetually 30,000 miners' inches, both surface and subterranean, and any and all other waters which flow over said water shed and into said water basin owned by I. A. Van Dyke, and all of the water of the streams and creeks which flow from the headwaters of the Pinal Mountains and all the tributaries and affluents of said streams; that said streams are supplied from live springs, melting snows and rains in the Pinal Mountains and on the water shed and constitute the supply of water that flows into the water basin; that the purpose and intention of appropriating said waters was to supply the consumers of the Miami Townsite with water; that the water basin receives its supply of water through the waters appropriated by I. A. Van Dyke in this water right; that because of the desert country, the scarcity of water and the difficulty of securing potable water in this country, it is necessary in order to maintain an adequate

supply of water, that I. A. Van Dyke own this water right,
89 the demand in this district for water being so great that if the ownership were vested in other persons, that it undoubtedly would be pumped and utilized in other ways; that there is a great demand for water in this district for the concentrating of low grade copper ores, there being one mill of 3,000 tons daily capacity, and one of 10,000 tons daily capacity in course of construction, which must be supplied with water for the concentration of ores. For this reason the territory within a reasonable distance from this district, which is water bearing, has been purchased and is owned by interests that need a supply of water in their business. This is one of the reasons why the ownership of the water basin, the water shed and the water rights are essential to the maintenance and continuance of the I. A. Van Dyke water system which supplies the residents of Miami Townsite with water. The value of said water right owned by I. A. Van Dyke is $20,000.00.

R. G. THOMAS.

Subscribed and sworn to before me this 1st day of August, 1914. My Commission expires Feb. 19, 1916.

[NOTARIAL SEAL.] M. BLEDSOE,
Notary Public in and for Gila County, State of Arizona.

90 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE and FRANK A. JONES, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona; and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Affidavit of L. F. Fletcher.

STATE OF ARIZONA,
County of Gila, ss:

L. F. Fletcher being first duly sworn deposes and says: I am a citizen of the United States and of the State of Arizona, and a resident of the town of Miami, Gila County, Arizona; that I have been engaged in the real estate business since the year 1907; that I am now engaged in the real estate business in the town of Miami, Gila County, Arizona, and maintain a real estate office in said town; that I am familiar with real estate values in the Miami Townsite and the value of land adjacent thereto; that I am familiar with the I. A. Van Dyke water system situated in and near Miami Townsite,

and the land used and useful in connection therewith; that the land owned by I. A. Van Dyke and used and useful in connection with said water system consists of various strips of land four feet in width through and upon which mains are laid, and various strips of land two feet in width through and upon which lateral
91 pipes connected with said mains are laid, together with a few small strips of land reserved for future use in the laying of mains and lateral pipes, which land is situated within said Miami Townsite, additions thereto and the land adjacent thereto; that the land adjacent to Miami Townsite, used and useful in connection with said I. A. Van Dyke water system and owned by said I. A. Van Dyke, consists of 189.7 acres, all lying in one body, 60 acres of which comprises the water basin for the storage of water, and 129.7 acres of which land comprises a water shed surrounding said water basin; that a large portion of the land comprising said water shed and water basin is desirable land for residence purposes, and unless said land was owned and controlled by I. A. Van Dyke, the same would be settled upon by other parties and residences would be erected thereon and the same would be occupied by tenants and the offal, refuse and excrement necessarily resulting from said occupancy and residence, would be deposited upon said land and would contaminate the water flowing therefrom and into said basin and used and distributed by said I. A. Van Dyke through said water system; that in order to prevent the use of said land for such residence purposes it is absolutely necessary that said land be owned and controlled by the said I. A. Van Dyke, and used by her in connection with said system; that efforts have recently been made to establish a dumping ground for garbage and a cemetery thereon, and by reason of the ownership and control of said land by said I. A. Van Dyke, and its use by her in connection with said water system, she was enabled to and did prevent the establishment of said garbage dump and cemetery thereon; that the land comprising said water basin is of the value of $57,000.00; that the land comprising said water shed is of the value of $16,720.00, making the total value of $73,720.00; that I arrived at my estimate of said valuation and base the same upon the sale of real estate of the same or similar character in the vicinity of said land; that the said
92 strips of land through and upon which the main and lateral pipes of said water system are laid in Miami townsite and adjacent thereto, and the strips of land reserved for future use in the laying of mains and lateral pipes is of the value of $43,884.34; that these values were secured by a careful tabulation made as follows: The rights of way for the water mains are four feet in width; the rights of way for the laterals are two feet in width, and the value of the rights of way were determined upon the basis of the value of abutting property, the amount of value of the abutting property being determined in all instances upon the basis of a valuation placed upon said property by the County Assessor for the year 1914; this method was used in all parts of the townsite with the exception of a proportionately small area in the western part of the townsite. In this western portion the Assessor had failed to place

a valuation upon this section in lots and blocks, but included the valuation with other property. Upon this portion I made my own estimates of value based upon the Assessor's valuation of other property.

In securing the unit of value, the number of square feet of the abutting property was determined and the assessed valuation placed thereon by the Assessor was divided by the number of square feet area. The unit value was then used as a factor in finding the value of the abutting right of way by multiplying the number of square feet in the abutting right of way by the unit value; the areas of the lots and the areas of the rights of way were determined by Engineer Thomas, and the values of the property determined by the County Assessor and myself.

That I am familiar with a certain water right owned by I. A. Van Dyke; that I. A. Van Dyke has appropriated and claims perpetually 30,000 miners' inches, both surface and subterranean, and any and all other waters which flow over said water shed and into said water basin owned by I. A. Van Dyke, and all of the water of the streams and creeks which flow from the headwaters of the Pinal Mountains and all the tributaries and affluents of said streams;
93 that said streams are supplied from live springs; melting snows and rains in the Pinal Mountains and on the water shed, and constitute the supply of water that flows into the water basin; that the ownership of said water right by said I. A. Van Dyke is absolutely necessary in connection with said water system in order to maintain an adequate supply of water therefor, and that without said water right the said I. A. Van Dyke could not control and acquire the water used in and through said system.

That the value of said water right is the sum of $20,000.00.

L. F. FLETCHER.

Subscribed and sworn to before me this 3rd day of August, 1914.
My commission expires February 19, 1916.

[NOTARIAL SEAL.] M. BLEDSOE,
Notary Public in and for
Gila County, State of Arizona.

94 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Affidavit of A. Reid.

STATE OF ARIZONA,
County of Gila, ss:

A. Reid, being first duly sworn, deposes and says: I am a citizen of the United States and of the State of Arizona, and a resident of the town of Miami, Gila County, Arizona; that I am engaged in the real estate business with my principal office in the said town of Miami; that I have been engaged in the real estate business for a period of about five years; that I have been a resident of Miami Townsite for more than two years; that I am thoroughly familiar with the land contained in said Townsite, and am also quite familiar with the I. A. Van Dyke water system situated in Miami Townsite and the land adjacent thereto; that I am familiar with the property used in connection with the said I. A. Van Dyke water system and necessary and useful in connection therewith; that I am familiar with real estate in the Miami Townsite and adjacent thereto and of the value thereof; that I am particularly familiar with the land used and useful in connection with the said I. A. Van Dyke water system, and constituting a part of said system, and with the land adjacent thereto; that the land adjacent to Miami Townsite and used and useful in connection with the said I. A. Van Dyke water system and owned by the said I. A. Van Dyke consists of
95 189.7 acres, of which 60 acres comprises a water basin and 129.7 acres comprises a water shed, which water shed surrounds said water basin. The water distributed through the I. A. Van Dyke water system flows from said water shed into said basin, which water basin is filled with sand; the water settles in the sand and is held and stored there; that a large portion of the land comprising said water basin and said water shed is desirable land for residence purposes, and unless said land was owned and controlled by I. A. Van Dyke the same would be settled upon by other parties and residences would be erected thereon, and the same would be occupied by tenants, and the offal, refuse and excrement necessarily resulting from such occupancy and residence, would be deposited upon said land and would contaminate the water flowing into said

basin, which water is used and distributed by the said I. A. Van Dyk through said water system; that in order to prevent the use of said land for said residence purposes, it is absolutely necessary that said land be owned and controlled by I. A. Van Dyke and used by her in connection with said water system; that efforts have recently been made since I. A. Van Dyke acquired said property to establish a dumping ground for garbage and a cemetery thereon, and by reason of the ownership and control of said land by I. A. Van Dyke, and its use by her in connection with said water system, she was enabled to prevent the establishment of said garbage dump and cemetery thereon. That the land comprising said water basin is of the value of $57,000.00; that the land comprising said water shed is of the value of $16,720.00; making a total valuation of $73,720.00. That I have made my estimate of said valuation upon the prices paid for real estate of the same and similar character in the vicinity of said land.

A. REID.

Subscribed and sworn to before me this 3rd day of August, 1914. My Commission expires February 19, 1916.

[NOTORIAL SEAL.] M. BLEDSOE,
Notary Pubic in and for Gila County, State of Arizona.

96 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Affidavit of I. A. Van Dyke and Cleve W. Van Dyke.

STATE OF ARIZONA,
County of Gila, ss:

I. A. Van Dyke and Cleve W. Van Dyke, being first duly sworn, each for himself and not one for the other, deposes and says: I am one of the complainants named in the above and foregoing suit; that in the year 1909 I caused to be organized the Miami Townsite Company, a corporation, which corporation was organized under the laws of Arizona, and said Miami Townsite Company acquired a tract of land for the purpose of establishing a town thereon; that said Miami Townsite Company caused said tract of land to be sur-

veyed into lots, blocks, streets and alleys, and established a townsite business; that said land so acquired by said Miami Townsite Company is the same land upon which is now situated the Miami Townsite in Gila County, State of Arizona; that said land is situated in the heart of a desert country, and that in order to promote and develop a town thereon, it was essential to have a water supply, and that in order to facilitate the establishment of said town, and to sell and dispose of lots and land therein and develop a town thereon, it became necessary to establish a water system to be operated in connection with said townsite business, and in furtherance thereof I. A. Van Dyke acquired a tract of land comprising 189.7 acres, of which said tract of land 129.7 acres constitutes a water shed and 60 acres of which constitutes a water basin. From this water basin a supply of water was secured through three wells which were constructed thereon. The said I. A. Van Dyke established a pumping plant, connected said wells with mains laid through and upon said lands, connected said mains with laterals, which in turn are connected with the property owned by purchasers of lots of land in said Miami Townsite, and thereby established the water system known as the I. A. Van Dyke water system, and since the acquirement thereof I. A. Van Dyke has been and now is operating said water system in connection with said townsite business and supplying the residents and inhabitants of said townsite with water; that said water system was established and has been operated and is now being operated solely and exclusively for the purpose of supplying the residents and inhabitants of said Miami Townsite with water, and not for the purpose of supplying persons outside of said townsite, or the public generally with water; that at all times since the establishment of said water system I. A. Van Dyke has refused to supply persons residing outside of the said Miami Townsite with water, except in two instances, as follows: On one occasion when the said I. A. Van Dyke purchased an additional piece of ground to be used as an addition to said Miami Townsite from one John H. Davis, and as an inducement to the said John H. Davis to transfer said tract of land to I. A. Van Dyke, it was agreed that he should be supplied, and he has been supplied since said time, with water from said water system. A second instance is in the case of one J. P. Glass, who purchased real estate from the Miami Townsite Company, and in order to square up the piece of property that he purchased from the Miami Townsite Company, he purchased a portion of the Davis Tract from the said John H. Davis at about the same time that I. A. Van Dyke purchased a portion of the same tract from the said John H. Davis, and the water that Mr. Glass was securing on the Miami Townsite was extended by him for his use to the fractional piece of ground that was purchased by him from the said John H. Davis; that it was never intended that the water system thus established should be used to supply the general public outside of Miami Townsite with water, and it has always been stated by I. A. Van Dyke and has been understood in the community where the I. A. Van Dyke water system has been established and is in operation, that at no time

would the I. A. Van Dyke water system supply water to others than those who are residing upon the Miami Townsite, and that as stated before herein, I. A. Van Dyke has expressly refused on many occasions to supply water to other townsite projects in the vicinity of the Miami Townsite. That the Prochaska Townsite management which townsite is adjacent to Miami Townsite has requested of I. A. Van Dyke that she furnish and supply the inhabitants thereof with water; that the residents on the property of the Orphan Company, being land adjacent to Miami Townsite, have requested of I. A. Van Dyke to furnish and supply them with water and the residents on the Davis Canyon property, adjacent to Miami Townsite have requested of I. A. Van Dyke that she furnish and supply them with water; that the residents of said Prochaska, Orphan and Davis properties amount to more than 200 families; that I. A. Van Dyke has always refused to supply said persons with water from the I. A. Van Dyke water system and is not now furnishing or supplying water to them; that the land used and useful in connection with said water system, including strips of land in and upon which the main and lateral pipes are laid, is owned in fee simple by I. A. Van Dyke.

I. A. VAN DYKE.
CLEVE W. VAN DYKE.

Subscribed and sworn to before me this 3d day of August, 1914.
My Commission expires Feb. 19th, 1916.
[NOTORIAL SEAL.]

M. BLEDSOE.
Notary Public in and for the County of Gila, State of Arizona.

99 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Affidavit of Cleve W. Van Dyke.

STATE OF ARIZONA,
County of Gila, ss:

Cleve W. Van Dyke, being first duly sworn, deposes and says I am a citizen of the United States and a resident of the Miami Townsite in the County of Gila, State of Arizona; that I am manager of the I. A. Van Dyke water sysytem; that I have had charge o

the organization, construction and operation of said system from its inception; that I have had nine years' experience in the construction and operation of water systems in Arizona; that I have had charge as manager of the construction work of water plants and water systems, and other work of a like nature, amounting to an expenditure of over a million and a half dollars in Arizona; that in the handling of this business my duties have placed me in contact with every phase of the water business from the securing a supply of water to its delivery to the customers, and the collection of accounts; from my experience in this work in Arizona I have found that there are expenditures in the establishment of a water system which are unusual in other places; this is due first to the high cost of interest, to the high cost of labor, to the high cost of freight rates, to the high cost of engineering, and to the high cost of securing
100 a supply of water in this desert country. As manager of water systems I have frequently come in contact with many engineers, especially young engineers just out of college, whose training and education on water systems have been received in such parts of the country where the above enumerated conditions do not exist. It frequently occurs that such engineers in the estimating of the values use tables prepared as averages in states where pioneer conditions do not exist, and where the average costs are not hampered by the conditions found in Arizona. Such engineers are unable to appreciate the use, necessity and value of a permanent water supply and water ground in a desert country, to a water system. In the Mississippi Valley, on both the Eastern and Western coasts water is so plentiful that generally all that is needed is an equipment to pump the same from some river, stream or underground flow. Where conditions of this nature exist, the only essentials necessary to a water system is an equipment used in distributing the water, and for the pumping and storage of the same. In Arizona, however, outside of the agricultural valleys, a water distribution system is a vastly different problem. There the first and greatest expense incurred in the establishment of a water system in such localities as Miami, is securing an adequate supply of good wholesome water. In fact, no business man of sufficient business ability to organize, develop and conduct a water system successfully would consider a water enterprise involving a considerable amount of investment, without first arranging for a definite supply of water. This phase is usually found to be the most expensive phase of water systems in the mountain towns of desert Arizona. One other phase that the experience of water distributors have found to be essential in mountain communities, is to care for the quality and kind of water to be provided their consumers. The necessity of securing and maintaining a sanitary supply of wholesome water is primary.

101 That the large well and drift alleged in Paragraph V of complainants' Bill in Equity, and referred to in the affidavit of W. P. Geary on pages two and three thereof, was shown at the hearing to Mr. Geary; that while such well was not then completed, there only remained a small portion of it to complete, that Chairman Geary at the hearing directed the engineer to determine its cost

and include it in the valuation, but that it never was included in the valuation; that this well has been used and is useful and necessary at the present time, and has been in use ever since its construction as a part of the system; that Mr. Ben Ferguson, the engineer of the Corporation Commission, inspected the well at the time, made an estimate of its value when completed, and had all of the necessary data to include this value in the well at the time of the hearing; that the I. A. Van Dyke water system is constantly growing in order to meet the increased demands caused by the rapid growth of Miami Townsite; that between the time of Engineer Ben Ferguson's first visit to Miami and the hearing, a considerable additional investment had been made in the water system; that investigation of these additions was made by Mr. Ferguson, and that some of these were allowed by the Commission; that at no time in the construction of the I. A. Van Dyke water system has a request been made for authority to build, construct or increase any of the portions of the system used, for the reason that the same is a private enterprise, is privately owned, and is not considered within any class of enterprises subject to the jurisdiction of the Corporation Commission. That said well, at the time of the investigation and hearing by said Corporation Commission was as much an essential and necessary part of the Van Dyke Water system as any other part thereof.

That for the spur track referred to in the affidavit of W. P. Geary on page three thereof, only $90.25 was allowed in the estimate made by Engineer Ferguson; that the total cost to I. A. Van Dyke
102 for said spur track was $403.78; that the balance of the cost of construction of said spur track was borne by the railroad company; that this said spur track is used and useful in hauling necessary material to the water plant; that the lowest possible valuation that should be placed upon said spur track for rate-making purposes of the water system should be not less than $201.89.

That there was no valuation allowed for one Mietz & Weiss 75 H. P. engine; that the reproduction value of said engine, including its equipment, should be $7,568.13; that at the time of the hearing said engine was being used, and has been used ever since for the pumping of water for the I. A. Van Dyke water system; that Engineer Ben Ferguson knew that it was being used, knew of its value at the time, and knew that it was used, useful and necessary; that Mr. Geary saw the engine in operation, knew it was being used, and knew that it was necessary. Two gasoline engines are used as an auxiliary equipment when the Mietz & Weiss engine is unable to furnish the adequate supply of power; a Fairbanks & Morse gasoline engine is used as an auxiliary pump; when the water supply is low a Stover gasoline engine is also used as an auxiliary engine to pump water; when the Mietz & Weiss engine is disabled, both gasoline engines are used as auxiliary pumps; that over 50 per cent of the power produced by these engines is used and consumed in the pumping of water; that therefore 50 per cent of the value of the Mietz & Weiss engine is chargeable against the water system; the Mietz & Weiss engine was purchased because of the inadequacy

of the two gasoline engines which are now used as auxiliary engines; that the Mietz & Weiss engine was purchased with the end in view of using it for water pumping purposes; that if this had not been necessary, the purchase of the engine would not have been justified; that the total value chargeable against the water system of this engine and its equipment is $3,784.06, no part of which the
103 Commission has ever allowed in estimating the value of the water system for rate making purposes, neither has a charge been allowed by the Commission for the power which the engine produces and which is consumed by the pumps, and if the order made by the Commission of May 1st is allowed to stand, it means that no adequate compensation is being received either for power produced by the engine or return upon this investment.

That prior to said hearing before said Corporation Commission, tow of its representatives, Mr. Ben Ferguson, and Mr. W. N. Sangster, came into the office of the I. A. Van Dyke water system for the purpose of investigating the books of account kept by I. A. Van Dyke, and also examined the water system and the property connected therewith; that they spent several days in examining the property and the books of account of the I. A. Van Dyke water system, and that in their investigation of said property and said books, the employes of the I. A. Van Dyke water system rendered them every possible assistance within their power to enable them to arrive at a fair, just and reasonable estimate of the cost and expense of operation and the value of all the property belonging to the system; that said Ferguson and said Sangster were not hindered in the slightest degree in the investigation of said books of account and said property and nothing was concealed from them, but on the contrary every assistance was rendered them and never at any time has I. A. Van Dyke or any of her employes attempted to conceal any information or any facts that would assist the said Ferguson and Sangster in arriving at a true, just and fair valuation of said property or of the operating expenses of said water system; that the said Engineer Ben Ferguson was supplied with a map showing the pipe line system and another map showing the water basin and water shed; that the methods of securing water were explained to him in detail; that the necessity of the ownership of the water
104 basin and the water shed were explained to him in detail; that it was explained to Mr. Ferguson that it was necessary to own the water shed and water basin in order to furnish an adequate supply of water to the I. A. Van Dyke water system, that its ownership was further necessary in order to keep it sanitary so that the waters flowing into the wells of the I. A. Van Dyke water system would be uncontaminated. An effort was made to provide Mr. Ferguson with a valuation of the rights of way and the water basin and water shed, so that he might report these values to the Commission, but Mr. Ferguson refused to consider or accept such valuations, although they are a part of the water system used, useful and necessary in maintaining said water system.

CLEVE W. VAN DYKE.

Subscribed and sworn to before me this 3d day of August, 1914.
[NOTARIAL SEAL.] M. BLEDSOE,
Notary Public.

My commission expires Feb. 19th, 1916.

105 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona; and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Affidavit of T. J. Corcoran.

STATE OF ARIZONA,
County of Gila, ss:

T. J. Corcoran being first duly sworn, deposes and says: I am a resident of the Miami Townsite in the County of Gila, State of Arizona; that I am employed by I. A. Van Dyke in connection with the water system now owned and operated by the said I. A. Van Dyke, in the Miami Townsite, in the capacity of superintendent; that as such superintendent I am familiar with the I. A. Van Dyke water system; that I have been employed as such superintendent since the installation of the water system in 1909; that I have been associated and connected with the water business over thirty years and am familiar with the needs and necessities of the water business, and with the equipment that is used, useful and necessary to the economical operation of a successful water business; that the I. A. Van Dyke water system is located in the Miami Townsite, and is operated for the sole purpose of supplying water to the residents of the Miami Townsite; that the water supply for the I. A. Van Dyke water system is drawn from four wells located in the
106 water basin, sixty acres in extent; that this water basin is surrounded by a water shed containing 129.7 acres, which constitutes the water shed; that the water basin and water shed are owned by I. A. Van Dyke, and is used, useful and necessary to secure water for the I. A. Van Dyke water system; that it is necessary that I. A. Van Dyke own and control said water basin and water shed in order to be able to keep said water supply sanitary and potable; that I. A. Van Dyke owns in connection with said water shed and water basin a water right, a stream of 30,000 miners' inches of water both surface and subterranean, which flows from streams and creeks into said water basin together with all the tributaries of said streams and that said water right was located for the

purpose and with the intention of developing and securing said water for consumers in the Miami Townsite; that the waters which supply the streams, creeks and tributaries to the water basin originate from live streams, melting snows and rains in the Pinal Mountains and upon the water shed; that these waters are conducted to the water basin; that this water basin is filled with sand and that the waters are retained and stored in said sand; that the wells of the I. A. Van Dyke water system have been dug in the water basin; that by virtue of the fact that the waters supplying the water system of I. A. Van Dyke is surface water; that it is positively essential and necessary that the water basin and the water shed be kept in a sanitary condition to keep the waters uncontaminated; that during the wet season the waters rise to the surface of the water basin and as the season advances and the drought begins, the waters sink in the basin, making it necessary to run drifts into the lowest portions of the basin, in order to secure sufficient water for the season's supply; that Miami is located in a desert country where water is very scarce and very hard to secure and expensive to get; that in order to protect the water supply of the I. A. Van Dyke water system, the ownership of this basin is necessary to the system; that
107 in the Miami mining district adjacent to the Miami Townsite are several large lowgrade copper mines; that the ore is taken from the mines, crushed and concentrated by wet process; large quantities of water are necessary in these mills; that one mill has a capacity of 3,000 tons per day; and another mill, in course of construction, will have a capacity of 10,000 tons per day; that in order to secure sufficient water to maintain this work it is necessary to pump water into the district several miles; that water is so scarce in this district that one company secures its supply of water from the Old Dominion mine seven miles away, which is pumped to the concentrator; that the demand for water is so great in this desert community that in order to be secure in the water supply for the I. A. Van Dyke system it is necessary to own and control the water basin and water shed; that the Inspiration Consolidated Mining Company in order to protect their enterprise, at a large expenditure of money, has purchased several hundred acres of ground several miles distant from their plant; that they have gone 13 miles below their plant to locate a water right on the Pinal creek and have spent large sums in order to protect themselves; that the demand in this desert country for water ground is great and such ground is valuable; for the same sane business reasons we have copies the large mining industries of this district to protect the water supply of the I. A. Van Dyke water system in order to secure a sufficient water supply for the Miami Townsite; the I. A. Van Dyke water system was used for the purpose of supplying water to the residents of the Miami Townsite, the Miami Townsite Company having been organized by Ida A. Van Dyke, C. W. Van Dyck and L. D. Van Dyke; ever since its establishment, the I. A. Van Dyke system has followed the policy of furnishing water exclusively to the Miami Townsite; it has refused to supply applicants outside of the Miami Townsite; In Davis Canyon, on ground owned by the Orphan Cop-

per Company, and on the Prochaska Townsite are 200 families to whom the I. A. Van Dyke water system has refused to ex-
108 tend its mains to supply its people, inasmuch as the water that they have located and developed is inadequate to supply more than the needs of the Miami Townsite; at all times during the conduct of the I. A. Van Dyke water system its policy has been to supply the residents of the Miami Townsite and them only; all applicants living outside of said Miami Townsite have been refused connections, and it has been given out at all times that the I. A. Van Dyke water system was established merely for the purpose of supplying water to the residents of the Miami Townsite; the number of wells, the amount of water located, the amount of water basin and water shed purchased has at all times been based upon the principle that only such amounts would be secured as could be used and useful in the Miami Townsite; preparations beyond this have not been made; it is not now intended, nor has it ever been intended by the I. A. Van Dyke water system to supply a greater area than is constituted by the Miami Townsite; as superintendent of the I. A. Van Dyke water system I have charge of the water plant and pumps; the power to run the pumps of the I. A. Van Dyke water system is furnished by three engines, one 75 horsepower Mietz & Wiess engine, and two gasoline engines; one a 15 horse power Fairbanks and Morse gasoline engine, and one 16 horse power Stover gasoline engine; the 75 horse power Mietz & Wiess engine is the engine which is used regularly for the pumping of water. The gasoline engines are used as auxiliary equipment when the water is low and when the Mietz & Wiess engine is shut down for repairs. The three engines are used, useful and necessary to furnish an adequate supply of water continuously for the system. At the time of the hearing the Mietz & Wiess engine was in operation, and the Stover engine and the 15 horse power gasoline engine whenever needed. The Mietz & Wiess engine is connected with an electric generator which supplies the energy to pumps in wells that are outside the engine house. Fifty per cent of the power developed by these three engines is used for water pumping purposes. There is one spur track branching off from the Arizona Eastern Railroad and
109 used as a siding for the unloading of oils and materials for the water plant. As superintendent of said plant one of my duties is to maintain a sanitary condition upon the water shed and water basin, and during the entire time a strict surveillance of this property has been made by myself and my employes to maintain a sanitary condition upon said water shed and water basin. In instances where I have been unable to control said sanitary situation I have reported same to manager C. W. Van Dyke of said water system, and in several instances in order to control the sanitary situation it has become necessary for C. W. Van Dyke to complain to the local sanitary officers and to the board of health in order to insist upon sanitary measures, and in order to keep said water shed and water basin uncontaminated. Said board of health have co-operated with the I. A. Van Dyke water system with the result that said water shed and said water basin have been kept sanitary and the

waters have been kept uncontaminated. At the time of said hearing several loads of fresh stable manure was hauled and dumped upon said water basin by some parties unknown to me, and not connected with the I. A. Van Dyke water system. As was my custom I reported this to Manager C. W. Van Dyke, who reported the same to the sanitary officer. Said manure did not remain sufficiently long to contaminate the waters, but as is usual in such cases was removed or burned. There are no corrals or stables upon the I. A. Van Dyke water basin or water shed, and since the ownership of I. A. Van Dyke all corrals, residents or other conditions which would result in an unsanitary conditions of said water shed or water basin, or contaminate the said waters, have been removeed. There is a stable in that vicinity in which is stabled one horse, but said stable is below the wells, and is upon ground owned by the Miami Townsite Company, and because of its being below the wells it cannot in any way contaminate the waters of the said water system.

T. J. CORCORAN.

110 Subscribed and sworn to before me this 1st day of August, 1914.

My Commission expires June 14, 1916.

[NOTORIAL SEAL.]

A. REID,
Notary Public.

111 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, Defendants.

Affidavit of L. D. Van Dyke.

STATE OF ARIZONA,
County of Gila, ss:

L. D. Van Dyke, being first duly sworn, deposes and says: I am a citizen of the United States and of the State of Arizona, and a resident of the town of Miami, Gila County, Arizona, that I am an officer of the Miami Townsite Company, to-wit, Secretary, and an employe of the I. A. Van Dyke water system; that I have been associated with the work of constructing the I. A. Van Dyke water system during the past four years; that I have purchased practically all the equipment that has been installed in said system during the past four years; that I am thoroughly familiar with the I. A.

Van Dyke water system and the property and equipment used and useful in connection therewith; that I am familiar with the cost of such equipment and I know the cost of installing the same; that I have made a careful invoice of the plant of the I. A. Van Dyke water system and am familiar with the cost of same in this district; that I have prepared a report containing the reproduction
112 value of the cost of the plant and distribution system, including the cost of the wells, buildings, furniture, fixtures, engineering equipment, power plant, equipment, pipe and fittings, meters and meter boxes, tanks and reservoirs, supplies, machine shop equipment, spur track, fences and stationery.

That the total cost of the well is	$12,318.40
" " " " " " buildings is	4,702.40
" " " " " " furniture, fixtures and engineering equipment is	3,274.74
" " " " " " power plant equipment is	8,017.19
" " " " " " pipe and fitting is	17,704.30
" " " " " " meters and meters boxes is	1,601.50
" " " " " " tanks and reservoirs is	1,838.60
" " " " " " supplies is	967.49
" " " " " " machine shop equipment is	769.00
" " " " " " spur track is	201.89
" " " " " " fences is	88.22
" " " " " " stationery is	100.00
That the total value of the plant equipment above enumerated is	$51,583.73

That in determining the value of said equipment I have made careful invoices and examined said equipment personally, except pipe which is buried in the ground; that in the office of I. A. Van Dyke is kept an accurate record and an accurate map of all installations, and this data is complete and reliable.

That during the investigation by the engineer and accountant of the Corporation Commission, every effort was made to give them ample opportunity to gain full, complete and accurate knowledge of the value of said plant; that all the maps, files, records and books of every nature were at their disposal; that a map was furnished Engineer Ferguson of the water system showing the various pipe installations, and that another map was furnished him showing the water basin and water shed; that he was shown the engine
113 equipment; that there is a plant equipment consisting of one Mietz & Weiss 75 H. P. engine and other equipment, which was new at that time and had been recently installed, but which had been ordered some months before the investigation started, which was being used at the time and was useful and necessary to the water plant and that the value of the same is $7,568.30; that the engine and its equipment was purchased for the purposes for which it is being used, chief of which was the pumping of water; that this engine furnishes the main power and is the main plant

equipment for the pumping of water; that used in conjunction with this engine are two gasoline engines, one a 16 H. P. Stover engine of the value of $735.00 and one 15 H. P. Fairbanks Morse engine of the value of $1031.49; that the gasoline engines are used merely as auxiliary equipment to supplement the work of the larger Mietz & Weiss engine; that the gasoline engines are used when the Mietz & Weiss engine is shut down for repairs or when the water is low in the main well, and it is necessary to pump water from the Stephens well; that more than 50 per cent of the power produced by the engines is used for water pumping purposes; therefore for rate making purposes $3,784.06 of the Mietz & Weiss engine and its equipment is charged against the water system. This engine and its equipment was not allowed by the Corporation Commission in estimating the value of the equipment.

One well which is being used and is useful and necessary to furnish a water supply to the I. A. Van Dyke water system was not allowed by the Corporation Commission, the value of which well is $2265.71; this well was not completed at the hearing, but was shown to Commissioner Geary and to Engineer Ferguson and to Attorney General Bullard; this well was finished a few days after the hearing, and has been used ever since. The water supply still being inadequate, a fourth well has since been sunk, which is being used in conjunction with the other wells; the cost of this fourth well has not been included.

114 The growth of the I. A. Van Dyke water system has been rapid, as indicated by its income. The total amount of cash received in 1910 was $2,558.25. The total amount of cash received in 1911 was $5,737.74. The total amount of cash received in 1912 was $11,583.26. The total amount of cash received in 1913 was $27,850.41. The Corporation Commission, including its engineers, were familiar with this rapid growth; they were also familiar with the necessity of rapidly increasing the plant in order to care for the business; they have never exercised any jurisdiction or attempted to exercise any jurisdiction over the matter of increasing the plant equipment or making additions thereto.

The Arizona Corporation Commission was organized February, 1912, and during the years 1912, 1913 and 1914 many additions have been added to the I. A. Van Dyke water system and many expenses incurred over which the Corporation Commission has not attempted to exercise any jurisdiction.

That I am familiar with the water basin and water shed and water right owned by I. A. Van Dyke, all of which is used, and is a necessary part of the system. The water, both surface and subterranean, for many miles in this district has been located and is appropriated for various uses. If I. A. Van Dyke had not located and appropriated the waters leading into the water shed and water basin, it would have been located by others; if located and appropriated by others, it could not have been used unless secured by purchase for the I. A. Van Dyke water system; that waters flowing into the water basin are surface waters. The water basin is filled with sand and during the wet seasons the water soaks into the sand

and rises to the surface; as the season advances the water is pumped out through wells into the reservoirs of the I. A. Van Dyke water system. It is necessary that I. A. Van Dyke own said water basin and water shed in order to control its sanitary condition. There are six wagon loads of garbage hauled from the Miami Townsite daily.

Because of its convenience to the town, the garbage dump
115 would naturally be located in the water basin or upon the water shed. Numerous efforts have been made in this direction, but they have been stopped by the officers and employes of the I. A. Van Dyke water system. It was through their efforts that the garbage dump was established a mile south of the town on a different water shed from the I. A. Van Dyke water shed, in order that no garbage should be dumped upon said water basin and water shed.

That on page 6 of the affidavit of W. P. Geary submitted by the respondents in the above entitled matter, it is stated: "Near the lower well and situated in close proximity is an old barn and corral, the same being occupied by animals and the ground strewn with manure and refuse." The barn referred to by Mr. Geary is located several hundred feet below the well, the water from which drains away from the well; that the barn is used to stable one horse which is owned by an employe of I. A. Van Dyke; that it is situated on Van Dyke property, but is located in such a place as to not possibly contaminate the water; that it is not located upon the water basin or water shed of the I. A. Van Dyke water system; that on page 7 of said affidavit Mr. Geary refers to a well and drift which is being extended in the direction of Live Oak Gulch. The well which is being sunk and the drift which is being extended in the direction of Live Oak Gulch is on the opposite side of the valley, and the drain from the said land is an opposite direction and away from said well, and that there exists a large drainage canal located at the bottom of the valley between said Live Oak Gulch and said well; that I was present at the hearing and investigation by the Corporation Commission of the I. A. Van Dyke water system and know that this well and the drift was called to the attention of W. P. Geary, Chairman of the Commission, as an additional well then being constructed in connection with the water system, and Mr. Geary instructed Mr. Ben Ferguson, Engineer for the Commission, to go

down and investigate the property and include all property
116 that was not valued at the time of its first investigation; that Mr. Ferguson thereupon investigated the Stephens well and the new well and estimated an allowance of valuation therefor; that the Corporation Commission in its opinion and order of May 1st allowed the sum of $1,544.67, but reported no estimate of value on said new well then in course of construction; that the Corporation Commission in estimating the property and the value thereof comprising said water system, omitted therefrom the cost and value of said new well.

That I was in attendance at the hearing and investigation of the Corporation Commission on the 11th and 12th days of December, 1913, in the town of Miami, when said Commission took testimony in reference to the property and valuation thereof comprising said

I. A. Van Dyke water system; that Mr. B. Ferguston, an engineer employed by the Corporation Commission of Arizona, was sworn and testified at said hearing, and that during the examination of Mr. Ferguson, Mr. W. P. Geary, Chairman of said Corporation Commission made the following announcement, which is found at page 50 of the official transcript of the testimony taken at said hearing, quoting Chairman Geary:

"I am going to ask Mr. Ferguson to make a valuation of the second well, reproduction less depreciation, with such pipes as may connect it with the rest of the system which you have valued, and such improvements as are under way, and such improvements as will be required when completed. I think that covers everything."

That I have examined the opinion and order of the Corporation Commission made on the first day of May, 1914, which is supposed to be based upon the testimony taken at said hearing, and from the examination of said opinion and order I now state that said Corporation Commission did not allow any valuation for the well in the course of construction at the time of said investigation; that

117 at said hearing in the cross examination of said witness, Mr. Ferguson, which appears on pages 28 to 35 inclusive, of said witness, Mr. Ferguson was interrogated and answered as follows, to-wit:

Q. "As a matter of fact, don't you know that the *acres* of land now constituting what you have described as the water shed and which you say is necessary to be owned and maintained in connection with the water supply, is now being used for that purpose, for the accumulation of water to supply that well, is that true, Mr. Ferguson?"

A. "Those holdings constitute the drainage."

Q. "And carries the supply for that well, as you have testified, is that not true?"

A. "No, because the water shed areas back of the water shed would certainly be a source of supply."

Q. "Could this well be maintained without the source of supply which you have described as the water shed? When I say maintained I mean maintained so as to secure water in any useful amount?"

A. "Well, the drainage comes down that ravine, that draw where the holdings are situated."

Q. "Answer the question please. Read the question."

Reporter: Could this well be maintained without the source of supply which you have described as the water shed. When I say maintained I mean maintained so as to secure water in any useful amount?

Q. "Answer that question, useful amount in the Town of Miami?"

A. "Well, the water is certainly taken through that property."

Q. "And it is necessary for the maintenance of the well, is it not? You have already answered me."

A. "As I understand it, I have had it explained to me, the land mentioned does not extend to the ultimate source of supply, but that water certainly does drain through the land that you claim."

Q. "Please read the question and answer it?"

Reporter: Could this well be maintained without the source of supply which you have described as the water shed. When I say maintained I mean maintained so as to secure water in any
118 useful amount in the Town of Miami. And it is necessary for the maintenance of the well, is it not? You have already answered yes.

Q. "Please answer that yes or no."
A. "Well, it is necessary for the maintenance of the water supply."
Q. "And it is now being used in connection with the water supply?"
A. "To that extent."
Q. "Is it owned by Mrs. Van Dyke?"
A. "I don't know of my own knowledge?"
Q. "Didn't you ask?"
A. "I asked, yes, but I haven't seen the deeds or anything of that sort."
Q. "Not then, based upon your statement that this water shed is necessary to be used and is used in connection with the maintenance of the water supply in the well, would you not say that the acreage embraced in that water shed is of some value to the water system and should be included in your valuation?"

Mr. Bullard: "Do you claim that all that land goes to the use of the water utility?"
Mr. Jacobs: "All the land of I. A. Van Dyke that is now used in connection with the water system of the town of Miami for the purpose of maintaining water in that well: the total value of that land should be included in the valuation."
Mr. Bullard: "The total value of the land for water purposes and the total value of the land is another thing."
Mr. Jacobs: "It may not be valuable for any other purposes."
Mr. Stoneman: "Remember the question, Mr. Ferguson."

A. "In that respect it would have a value to the water company."
Q. "Why didn't you estimate the value then?"

Mr. Bullard: "He didn't estimate the value of any real estate; he stated that was for the Commission to determine."

Mr. Stoneman: "Why didn't you estimate the value then, Mr. Feerguson?"
A. "I didn't estimate the value of the real estate."
119 Q. "You said that five acres were necessary, why didn't you include more than five acres, why didn't you include that portion of the water shed which you now say is necessary to be used and is used in connection with the water system maintained for the supplying of the Town of Miami with water?"
A. "Because the five acres were certain to be included in the value."
Mr. Bullard: "You are not a real estate agent?"
A. "No, sir."

Q. "Don't you know the value of land for any purpose?"
A. "No."
Q. "You don't know anything about the value of land for any purpose?"
A. "No, I didn't attempt to value any part of it except what I was certain of."

Mr. Stoneman: "Read the question."

Reporter: "You said that five acres were necessary, why didn't you include more than five acres; why didn't you include that portion of the water shed which you now say is necessary to be used and is used in connection with the water system maintained for supplying the Town of Miami with water?"
A. "Because in my opinion the five acres were necessary for the well and the tank sites and works and I didn't attempt to include the rest of the real estate or make any suggestion either that it was or was not to be included."
Q. "Mr. Bullard asked you, suggested to you that you were not a real estate man and could not place a valuation on this land, you did value the five acres."
A. "I did not."
Q. "What would you say was the value of the five acres?"
A. "I haven't the faintest idea."
Q. "In your estimate of the value, depreciated and reproduction, you haven't given even the five acres any valuation?"
120 A. "No sir, I left that open."
Q. "You do think, Mr. Ferguson, that the five acres has some value?"
A. "Yes."
Mr. Jacobs: "The water shed real estate?"
A. "It would have an element of value to the water company."
Q. "And likewise the five acres which you have already mentioned, has a value?"
A. "Yes."
Q. "This real estate included in that water shed has both a physical and intangible value to this water system, has it not, the physical value being in the value of the land and the intangible value being the value determined by reason of its connection with the water system and used by the water system, and so would have a physical and intangible value, would it not? It would certainly have an intangible value?"
A. "Yes sir, it would."
Q. "And it would have a physical value, the land itself?"
A. "Yes."

That said Corporation Commission in estimating the property and the value thereof used and useful in connection with said system did not include or allow the land comprising said water shed or the valuation thereof.

L. D. VAN DYKE.

Subscribed and sworn to before me this 3rd day of August, 1914.
My commission expires February 19, 1916.
[NOTORIAL SEAL.] M. BLEDSOE,
Notary Public.

121 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Affidavit of G. C. Snyder, M. D.

STATE OF ARIZONA,
County of Gila, ss:

G. C. Snyder, M. D., being first duly sworn, deposes and says: I am a citizen of the United States, and a resident of the Miami Townsite in the County of Gila, State of Arizona; that I have practiced medicine in the Townsite of Miami and that I am a member of the board of health in the Miami Precinct; that I am familiar with the water basin and water shed from which is derived the water supply furnished to the Townsite of Miami by the I. A. Van Dyke water system; that dead stock, garbage or other unsanitary materials are not permitted to be dumped thereon; that the board of health and the sanitary officer have at all times aided and assisted the management of the water system to keep said water basin and water shed in a sanitary condition; that in order to do this it was necessary to establish an official garbage dump a mile south of the Miami Townsite, and over the divide; that this official garbage dump is the place where the garbage from the Townsite of Miami is being hauled and deposited; that this garbage dump is on a dif-
122 ferent water shed from that which furnished water for the Townsite of Miami; that an effort was made by one J. S. Miles to establish a cemetery upon the water shed owned by I. A. Van Dyke; that complaint was made to the board of health and the sanitary officer by C. W. Van Dyke, manager of the I. A. Van Dyke water system; that I made a personal investigation of the water shed and the proposeed site for the cemetery, and condemned same, because of the danger of contaminating the waters of the well; that an especial effort has been made by the board of health and the sanitary officer at the request of C. W. Van Dyke, manager of the water system, to keep said water basin and water shed free from garbage, dead animals, and unsanitary debris; that if said

efforts had not been made, and the garbage and debris from the town of Miami were allowed to be dumped on said water basin and water shed, that the waters of the wells which supply the Townsite of Miami would undoubtedly become contaminated; that because the water shed is kept free from garbage and other unsanitary materials that the waters furnished the Townsite of Miami are sanitary and potable; that the health of the community demands that the water shed and water basin be kept in a sanitary manner.

G. C. SNYDER, M. D.

Subscribed and sworn to before me this 1st day of August, 1914. My commission expires June 14, 1916.

[NOTORIAL SEAL.]

A. REID,
Notary Public.

123 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE and FRANK A. JONES, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Affidavit of J. H. Lacy, M. D.

STATE OF ARIZONA,
County of Gila, ss:

J. H. Lacy, M. D., being first duly sworn, deposes and says: I am citizen of the United States and a resident of the Miami Townsite in the County of Gila, State of Arizona; that during the past four years I have practiced medicine in Miami; that I am a duly qualified member of the board of health for the Miami Precinct; that I know where the water shed and water basin are, owned by the I. A. Van Dyke water system and that it is used in furnishing the water supply for the wells which supply water for the Miami Townsite; that I am familiar with the sanitary conditions thereon and that they are excellent in every respect; that garbage or refuse is not permitted to be placed on either the water basin or the water shed; that upon complaint of C. W. Van Dyke, myself and other members of the board of health investigated an attempt made by J. S. Miles to establish a cemetery on the water shed; that after the investigation it was decided that the waters of said wells would become contaminated, and said cemetery was prevented from being
124 located upon the said I. A. Van Dyke water shed; that a regular garbage dump for the town of Miami has been established south of the town and over the divide; that the gar-

bage for the town of Miami is hauled and deposited in said official garbage dump; that waters from the I. A. Van Dyke wells which are furnished from the water basin are sanitary and potable, and that the conditions of said water is obtained in a large measure by keeping garbage, refuse and dead animals from being placed upon said water shed and water basin; that special effort has been made at all times to maintain the said water shed and water basin in a good, clean and sanitary condition.

JOHN H. LACEY, M. D.

Subscribed and sworn to before me this 1st day of August, 1914. My commission expires February 16, 1918.

[NOTORIAL SEAL.] CLIFFORD C. FARRIS,
Notary Public.

125 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,

vs.

W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Affidavit of Henry Nichols.

STATE OF ARIZONA,
County of Gila, ss:

Henry Nichols, being first duly sworn, deposes and says: I am a citizen of the United States and a resident of the town of Miami, County of Gila, State of Arizona; that I am a regularly qualified acting Sanitary Officer for the Miami Precinct; that I have held such office from March, 1912, up to the present time; that I am familiar with the lands known as the water basin and the water shed, owned by I. A. Van Dyke, and used in connection with the water system, which is operated by the said I. A. Van Dyke, in the Miami Townsite; that as such sanitary officer I am familiar with the sanitary conditions on said water shed and water basin; that at all times during the period of my incumbency in office there has been no dead stock to my knowledge upon said water shed or water basin that has not been either removed or burned; that during the time that I have been sanitary officer that no garbage has been allowed to be dumped upon said water basin or water shed;
126 that there are no corrals thereon and the corrals and people who formerly lived there have been moved; that J. S. Miles attempted to secure a public cemetery upon said water shed, that

complaint was made to the board of health and to me as sanitary officer by C. W. Van Dyke, manager of the I. A. Van Dyke water system, and that said J. S. Miles was prevented by said board of health from placing a cemetery upon said divide; that the garbage dump for the town of Miami is more than a mile south of the town of Miami in a different water shed, and that said garbage is placed in such a way as not to contaminate the wells of the I. A. Van Dyke water system; that the average amount of garbage hauled from the Miami Townsite is six loads per day, and now being dumped in the official garbage dump. I am familiar with the ground immediately surrounding the well, and there are no stables and no corrals anywhere in that immediate vicinity, located above the well. There is one stable in which is kept one horse in that vicinity, but said stable is below the well and the waters flowing from it cannot in any way contaminate the well.

HENRY NICHOLS.

Subscribed and sworn to before me this 1st day of August, 1914.
[NOTORIAL SEAL.]
A. REID,
Notary Public.

My Commission expires June 14, 1916.

127 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Affidavit of Edwin S. Davis.

STATE OF ARIZONA,
County of Gila, ss:

Edwin S. Davis, being first duly sworn, deposes and says: I am a citizen of the United States, and a resident of the City of Globe, in the County of Gila, State of Arizona; that I am in the employ of the I. A. Van Dyke water system, in the capacity of accountant, and am familiar with the books of account of said water system; that I am also familiar with the valuations as determined by Engineer R. C. Thomas and L. F. Fletcher of the real estate, rights of way, and water right used in connection with the I. A. Van Dyke water system, and with the estimates made by A. Reid on the real estate comprising the water basin and water shed used in connection with said system; that I am familiar with the statement of valu-

ations made by L. D. Van Dyke on the wells, buildings, furniture, fixtures, engineering equipment, power plant equipment, pipe and fittings, meters and boxes, tanks, reservoirs, supplies, machine
128 shop equipment, spur track, fences, and stationery, same being the valuation of property used and useful in connection with the I. A. Van Dyke water system, which valuations so made and determined are set forth in their respective affidavits; that upon said valuations so made I have determined a depreciation and present value of said property, including the value of overheads, going value and working capital as the same appears in the following tabulation:

I. A. Van Dyke Water System.

Valuation of Rate Making, May 1, 1914.

	Reproduction value.	Per cent.	Depreciation amt.	Present value.
Real Estate	$73,720.00	..	.....	$73,720.00
Rights of Way	43,884.34	..	.....	43,884.34
Water Right	20,000.00	..	.....	20,000.00
Wells	12,318.40	2	$492.75	11,825.65
Buildings	4,702.40	3	282.14	4,420.26
Furniture, Fictures, and Engineering Equipment	3,274.74	5	327.47	2,947.27
Power Plant Equipment	8,017.19	4	141.28	7,875.91
Pipe & Fittings	17,704.30	4	708.17	16,996.13
Meters and Meter Boxes	1,601.50	7	143.30	1,342.60
Tanks	.....	10	115.60	.....
Tanks & Reserv's	1,838.60	4	129.90	1,704.40
Supplies	967.49	1	4.30	967.49
Machine Shop Equipment	769.00	6	92.28	676.72
Spur Track	201.89	3	12.11	189.78
Fences	88.22	6	10.57	77.65
Stationery	100.00	..	.....	100.00
	$189,188.07		$2,459.87	$186,728.20
Overheads	$21,000.00			
Going Value	9,000.00			
Working Capital	5,000.00			35,000.00
Total valuation for rate making				$221,729.20

The percentage of depreciation being the same as used by the Corporation Commission and the engineer of the Corporation Commission, except in the instance of power plant equipment, where I used a depreciation of 4 per cent, while that used by the Corporation

129 Commission's engineer was 5 per cent. Overheads, going value, and working capital have been added to the physical value of the property for the purpose of obtaining a valuation for rate-making purposes. The value which was taken for overheads is the total amount of property acquired and constructed during the construction period, which amounts to the sum of $68,056.37. The following percentages on this account were taken in order to obtain the sum of overhead charges. Valuation used for overhead percentage table, $68,056.37:

Supervision, 4 per cent	$2,722.25
Engineering, 5 per cent	3,402.82
Interest during construction—12 per cent. for 1½ years	12,050.15
Cost of organization ...1 per cent. } Legal expense .....2 per cent. }	2,141.69
Taxes during construction	683.50
Total	$21,000.00

Interest during the construction at 12 per cent. was charged at that time in this community.

I have determined the value for the depreciation reserve based upon the total value of depreciable property, which amounts to $49,023.86. Depreciation reserve is secured by taking 4 per cent. of the $49,023.86, amounting to $1,960.95.

Below is given an itemized statement by months, showing the total income of the I. A. Van Dyke water system:

I. A. Van Dyke Water System.

Statement of Gross Earnings for the 12 *Months, May,* 1913—*April* 1914.

	Water sales.	Taps.	Meter install.	Totals.
May, 1913....	$2,375.92	$80.00	$22.50	$2,478.42
June, "	2,343.45	146.15	7.50	2,497.10
July, "	2,415.90	10.00	20.00	2,445.90
August, "	2,542.18	40.00	17.50	2,599.68
September, "	2,544.45	20.00	2.50	2,566.95
October, "	2,492.35	.80	.....	2,493.15
November, "	2,418.85	15.75	.....	2,434.60
December, "	2,287.35	28.15	.....	2,315.50
January, 1914....	2,494.45	.....	.....	2,494.45
February, "	2,260.30	22.25	8.50	2,291.05
March, "	2,061.40	10.00	3.25	2,074.65
April, "	2,132.20	7.50	1.50	2,141.20
Totals	$28,368.80	$380.60	$83.25	$28,832.65

130 I. A. Van Dyke Water System.

Statement of Operating Expenses for the 12 Months, May, 1913—April, 1914.

Manager, @ $200.00 per month	$2,400.00
Office, payroll and expense	4,567.59
Labor, foreman, engineers, helpers, etc	5,279.00
Supplies	1,600.33
Repairs, power plant and lines	1,264.10
Taxes and assessments	1,930.64
Industrial insurance	318.55
Depreciation reserve	1,960.95
Total	$19,321.16

From these totals I deduce that the gross income is $28,832.65. The total operating expenses are $19,321.16, making a net profit of $9,511.49.

The net profit of $9,511.49 is .0428 of valuation on investment, or approximately 4 per cent.

The Arizona Corporation Commission estimated on the rates made by them in their opinion and order effective May 25, 1914, that there would be a total gross income of $14,782.27. The actual gross operating expenses of the I. A. Van Dyke water system amounts to $19,321.16. If the rates ordered by the Corporation Commission are allowed to stand it would give a yearly loss to the I. A. Van Dyke water system of $4,538.89.

That the above and foregoing facts are to the best of my knowledge and belief accurate, true and correct.

EDWIN S. DAVIS.

Subscribed and sworn to before me this 3rd day of August, 1914. My Commission expires February 19, 1916.

[NOTORIAL SEAL.] M. BLEDSOE,
Notary Public.

Endorsements: In the District Court of the United States for the District of Arizona. Ida A. Van Dyke and Cleve W. Van Dyke, Complainants, vs. W. Paul Geary, Amos W. Cole and Frank A. Jones, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona; and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants. Complainants' Affidavits to be used on Hearing of Application for Interlocutory Injunction. George J. Stoneman, F. C. Jacobs, Reese M. Ling, Solicitors for Complainants. Filed August 10, 1914. George W. Lewis, Clerk.

131 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE and FRANK A. JONES, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Affidavit of Cleve W. Van Dyke.

STATE OF CALIFORNIA,
County of San Francisco, ss:

Cleve W. Van Dyke being first duly sworn deposes and says: That on the 20th day of June, 1914, a complaint was filed with the Arizona Corporation Commission by Joe L. Carmack and other residents of a certain town in the County of Gila, State of Arizona, owned by one Joe V. Prochaska, and by him designated as the "Live Oak Addition" to the town of Miami, in said complaint calling the attention of the Corporation Commission to a "water famine" existing in said Live Oak Addition to the town of Miami, said complaint being designated by said Arizona Corporation Commission as Docket No. 186; that thereafter on July 3rd, 1914, a hearing based upon said complaint was by said Corporation Commission ordered, which hearing was had at the town of Miami on July 8th, 1914, on which said date the answer of Cleve W. Van Dyke and Ida A. Van Dyke in said order designated as defendants, was filed; that said answer after setting up substantially the same defenses
132 as were interposed by the said Ida A. Van Dyke and Cleve W. Van Dyke in Docket No. 69, Sub. 1, as more fully set out in the bill of complaint filed in the District Court of the United States in and for the District of Arizona, therein designated and docketed as "In Equity E-2 (Globe)", in addition thereto pleaded and set forth that Ida A. Van Dyke, Cleve W. Van Dyke and L. D. Van Dyke, being the organizers and original owners of the lots and land in what is known as the Miami Townsite, in said County and State, and through Ida A. Van Dyke organized, equipped and maintained a water system known as the "Ida A. Van Dyke Water System", for the sole, express and only purpose of supplying purchasers of town lots in said town of Miami with water, and further setting forth that the quantity of water which the said Ida A. Van Dyke was able to pump and supply was barely sufficient for the needs of the owners and purchasers of lots in Miami Townsite, and was not sufficient to supply residents upon lots of land outside of said Townsite of Miami;

And that said Corporation Commission for all of said reason had no jurisdiction, right or authority to entertain said complain or to make any order requiring the said Ida A. Van Dyke to furnis water to any person or persons in the so-called addition owned b the said Joe V. Prochaska, or to any other persons residing outsid of the Townsite of Miami; under the rule laid down in the case o Del Mar Water Light and Power Company v. Nahleman, 140 Pac 591; affiant further states that the transcript of testimony taken a said hearing plainly shows that the said Joe V. Prochaska being th owner of forty (40) acres of land adjoining the townsite of Miam (said ownership being derived by the said Joe V. Prochaska throug a homestead patent in the United States Government), subdivide

said tract of land into lots and blocks and sold therefrom lot
133 to the said Joe L. Carmack and other residents therein, and fo
the purpose of supplying said purchasers of lots with wate undertook at his own expense and as a partial consideration for th sale of said lots to supply said purchasers with water from a wel equipped with pump, tank and water mains situated upon said trac of land; that the said Joe V. Prochaska continued to supply wate to purchasers of said lots and desisted only, according to his ow sworn testimony because of the fact that he was pumping water a a loss to him of Sixty ($60.00) Dollars per month.

That said so-called Live Oak Addition is no part of the town o Miami, nor did the said Joe V. Prochaska depend upon the suppl of water developed by the said Ida A. Van Dyke at the time sh platted said town of Miami into lots and blocks;

Said transcript of testimony further shows that the said Ida A Van Dyke has consistently for a period extending over the las three (3) years refused to supply water to residents of other addition individually owned by others, than the owners of the Miami Town site, in which additions there reside approximately two hundre (200) families, and that said water system has been maintained a hereinbefore stated, for the express convenience of the purchase of lots in said Miami Townsite.

That it is alleged in the bill of Complaint filed in said Equit Case F-2 (Globe) that the members of said Arizona Corporatio Commission, and said Commission, is without power, authority o jurisdiction to entertain or investigate either the water supplied b the said Ida A. Van Dyke or the rates charged by her, but no

withstanding the restraining order issued out of this Cou
134 on the 25th day of June, 1914, restraining and prohibitin
said members of said Commission, and said Commission fro interfering with or attempting to enforce the rates prescribed b said Commission as in said bill of complaint set forth, said Arizon Corporation Commission and the members thereof upon the prete that said restraining order does not comprehend by its terms th investigation hereinabove complained of are attempting to evade i provisions to the extent of compelling said Ida A. Van Dyke an Cleve W. Van Dyke to extend the water mains of the Ida A. Va Dyke water system to supply the said Joe V. Prochaska with wat and to further regulate the rates and charges to be charged by th

said Ida A. Van Dyke for water to be served by the extension of said mains to the owners and occupants of lots of land owned and platted by the said Joe V. Prochaska.

Affiant further alleges that he is informed by Mr. George J. Stoneman, one of his attorneys, and upon such information and belief alleges the truth to be that said order so by said Arizona Corporation Commission made under date of July 23rd, 1914, was purported to be based upon the testimony taken at said hearing on July 8th, that the transcript of said testimony was filed with the Corporation Commission on July 17th, that said order was signed by only two (2) of the commissioners, to-wit Amos W. Cole and W. Paul Geary, the other of the Commissioners, F. A. Jones having refused to sign said order for the reason as affiant is informed and believes that the evidence in said case did not justify the making of said order; that one of the Commissioners, W. Paul Geary left the City of Phoenix on the 10th day of July, 1914, and did not return until the 1st day of August, 1914 and that the said Geary signed said order without having read the testimony taken at said hearing and without
135 being present thereat and that said order in so far as the said Geary is concerned was made arbitrarily, without knowledge of the facts or of the evidence taken at the said hearing in disregard of the rights of affiant and the said Ida A. Van Dyke, and as affiant alleges and believes was made for the purpose of maliciously harrassing and annoying the said Ida A. Van Dyke, and affiant herein and in disregard of the restraining order heretofore by the District Judge of the District Court of the United States in and for the District of Arizona, in said Equity cause E-2 (Globe) made.

Affiant further states that he is the Manager of the said Ida A. Van Dyke Water System in the distribution of water by her, that he is interested in said water system and makes this affidavit on account of such interest and that justice may be done.

Affiant begs leave in further support of this affidavit to read the transcript, or so much thereof, of the testimony taken at the hearing hereinabove referred to as your Honors may deem necessary;

That a motion for a rehearing of said order was on the 1st day of August, 1914, filed with said Arizona Corporation Commission and was by said Commission on the same date denied.

CLEVE W. VAN DYKE.

Subscribed and sworn to before me this 10th day of August, A. D., 1914.

[Seal U. S. District Court.]

GEORGE W. LEWIS,
Clerk U. S. District Court,
District of Arizona.

Endorsements: In Equity E-2 (Globe). In the District Court of the United States in and for the District of Arizona. Ida A. Van Dyke and Cleve W. Van Dyke, Complainants, *vs.* W. Paul Geary, Amos W. Cole, and Frank A. Jones, Members of the Corporation Commission, etc., Affidavit. I hereby acknowledge service of within

notice this 4th day of August for the Arizona Corporation Commission and for myself. A. W. Cole, Commissioner. Filed August 10, 1914. George W. Lewis, Clerk.

136 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,

vs.

W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Affidavit of W. P. Geary.

COUNTY OF MARICOPA,
State of Arizona, ss:

W. P. Geary, being first duly sworn, deposes and says:

I am a duly elected, qualified and acting Member of the Corporation Commission of the State of Arizona and have been such at all times mentioned in the Bill of Complaint, filed by the Complainants herein.

As such Member of said Commission, I was designated by said Commission and for and on behalf of said Commission, to hear, investigate and take evidence at Miami, Arizona, on the 11th day of December, 1913, in that certain cause pending before the Commission, designated as Arizona Corporation Commission, Complainant, vs. Granite Springs Water Company, Inc., C. W. Van Dyke and I. A. Van Dyke, Respondents, Docket No. 69–Sub. I.

That pursuant to notice thereof duly given, said hearing was held at Miami, Arizona, on the 11th day of December, 1913, at which time and place all facts, appertaining to the valuation of the
137 property, accounting, etc., were heard and full and free opportunity rendered the Complainants herein to be heard.

Upon the evidence introduced at said hearing, and after a full consideration of the same was had, the order of the Commission was issued on the 1st day of May, 1914.

At said hearing at Miami, no evidence was introduced by the Complainants herein relative to any supposed water right of the value of $20,000, and the first knowledge I possessed of such a claim was gained through reading the Bill of Complaint and affidavits herein.

The large well and drift connected therewith, alleged in Paragraph V. of said Complaint, was not constructed at the time the Engineer of the Commission took an inventory of the plant property and was unfinished and not completed at the time of the hearing. No evi-

dence was introduced by the Complainants herein relative to the value of the same. Such well and drift, if constructed for the use of the water utility, was so constructed without the authority or permission of this Commission.

In fact, not only regarding rates but construction as well, the theory of the Complainants has uniformly and without deviation been that this utility being privately owned and unincorporated, is not subject to regulation in any manner whatsoever.

Complainants are in error in alleging no value was placed by this Commission upon the item designated as "Spur Track". Such valuation was allowed and so testified to by Ferguson, the Engineer of the Commission, at the hearing at Miami.

It is alleged in Paragraph V. that the Commission has allowed no valuation for the main pumping plant, of a value of $3,000. Again Complainants err. The Commission did allow for all elements of value connected with the pumping plant. The item referred to in said paragraph is undoubtedly connected with
138 and a part of the electric utility operated by Complainants, or either of them.

At said hearing, the Complainants herein offered no testimony regarding the value of any water basin. The value now claimed is One Hundred and Sixty Dollars ($160) per acre for two hundred and forty acres. Land in the Salt River Valley, under the Roosevelt irrigation project, can be purchased for a less sum. At the hearing, Witness H. M. Brown said Fifty Dollars ($50) per acre would be a liberal appraisement; Witness Mackay deemed Seventy-Five Dollars ($75) per acre sufficient, and such estimates were for land in the gulch where the well is situated and not representing the value of the surrounding hillsides and mountains. These various lands, on the hillsides and in the gulch, have been filed on and are held as mineral claims, the same being unpatented. Witness Mackay operates a water plant of his own, supplying a different section of Miami, and considers a tract 33⅓x100 sufficient area for the protection of his well and for water purposes.

The City of Phoenix owns a water system, supplying a city of approximately twenty-five thousand (25,000) inhabitants and approximately four acres are deemed sufficient for the protection of the well and for water purposes.

In the case at bar, about five acres were fenced about the lower well. Irrespective of any claims now made for water shed, I deem this five acre enclosure, and the value thereof, sufficient for the purposes of the Complainants herein in operating this particular well.

I personally visited the well and observed no effort, on the part of the Compainants herein, to protect the area outside the enclosure from contamination. In fact, within a short distance, estimated at about one hundred yards from the fence, and in the gulch,
139 approximately ten loads of manure was spread upon the ground. Nearby, and on property owned by the Complainants herein, various cottages were situated. These cottages enjoyed no sewer connections and in lieu thereof holes were dug in the ground. All of this is on the alleged watershed.

At the upper, or Stephens well, no enclosure is made. This well is unprotected as far as any efforts of the Complainants are concerned and at the hearing it was testified, by witnesses on behalf of the Complainants herein, that this watershed, in fact, all watershed was "open range".

We allowed five acres for real estate at the Stephens well, of the value of Seventy-Five Dollars ($75) per acre, that being the figure introduced in the evidence as fair value of the land.

Between the upper and lower wells, Witness Mackay owns a mining claim that occupies a very considerable area of the gulch and he stated that to attempt to drill a well on the hillside would occasion an expense in excess of any possible value.

The land about the Van Dyke holdings is higher in altitude than the Van Dyke land. The evidence taken at the hearing disclosed that the source of water supply is beyond any Van Dyke holdings and that water reaches the wells, percolating beneath the surface, and would so continue to do whether the complainants herein owned the surrounding hills or not.

In my opinion, based upon a thorough investigation of all matters germane to the valuation of this plant, and after considering each item separately, a valuation of real estate in excess of that allowed by the Commission is absurd. The evidence at the hearing before the Commission shows that these various mining claims, claimed by the Van Dykes as watershed, are best suited for a chicken
140 ranch and were formerly used as a goat ranch. Near the lower well, and situated in close proximity, is an old barn and corral, the same being occupied by animals, and the ground strewn with manure and refuse. This is situated on Van Dyke property.

At the time of the hearing, I requested full and complete information relative to valuation and any claims therefor, but the attitude of the claimants herein was that the Corporation Commission was without jurisdiction to make any investigation and valuation data was not forthcoming from said claimants herein. The testimony throughout shows this attitude clearly. It was admitted in the testimony that all rates were established and collected without permission of the Commission, and that a charge, not on file with the Commission (meter rental), was made and collected, giving as excuse therefor that the Company was not a corporation.

In the valuation of the properties, great care was taken; whenever possible, prices averaging over a period of five years were used; a liberal allowance was made for overhead values, and the judgment of this Court, as expressed in Bonbright vs. Geary, et al., carefully followed in all particulars.

C. W. Van Dyke stated that the side of the gulch containing the manure, barn and corral, cottages, etc., wouldn't drain into the well and that the water on that side contained sulphuric acid percolating from, what I recollect to be Live Oak Gulch. Yet, it is toward and in the direction of that side of the gulch he is extending a well and drift, for the purpose of collecting water, and asking, for a value thereon, which was not done at the hearing before this Commission.

Every item used and useful in the construction and operation of this plant was considered, and if omissions in the inventory exist, such are amply provided for in the overhead charges. Personally, I know of no ommissions.

W. P. GEARY.

Subscribed and sworn to before me this 1st day of August, A. D., 1914.

[NOTARY SEAL.] J. B. ORMOND,
Notary Public in and for Maricopa County, State of Arizona.

My Commission expires Mch. 18, 1916.

In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Affidavit of Ben Ferguson.

STATE OF ARIZONA,
County of Maricopa, ss:

Ben Ferguson, being duly sworn, deposes and says:

I have held the position of Engineer of the Arizona Corporation Commision about one and one-half years. I am a graduate of Troop College of Technology and have had experience in the design and operation and valuation of plant equipment.

As Engineer of the Arizona Corporation Commission, I prepared an inventory of the equipment of complainants' water plant and in preparing said inventory I was in Miami from June 5th, to June 11th, 1913, inclusive, and I was engaged in the arranging and working up of notes on said inventory some ten days following. I spent additional time in the investigation of complainants' water plant in connection with similar work in Globe. On the trip, I was in the district from October 4th to October 29th, 1913, inclusive giving such time as was necessary to developing local data on unit costs. I then made a valuation of complainants' water property from data obtained on these trips, from comparisons with unit costs developed in the appraisals of other water utilities in Arizona, and from manufacturers' costs and discounts, and filed said report with the Arizona Corporation Commission.

The unit costs contained in my report are on a basis of piece-meal construction, general constractors' profits being included therein.

The town of Miami is located back from the banks and in the hills along the lower end of a gulch which extends in a general north and south direction with its source in the Pinal Mountains. A large water shed in these mountains is drained directly and by tributary gulches into the sands of this large gulch, the water being submerged, and some fifty feet below the surface of the sand at the complainants' lower well. Portions of the water shed are variously owned by mining companies, individuals and the United States Government.

I find by scaling a map showing complainants' holdings as submitted by their engineer, Mr. R. G. Thomas, that said holdings occupy some 7500 feet of the gulch and banks thereof. The complainants, at the time of my last visit, December 12th, 1913, furnished water to Miami from two wells, sunk to bed-rock in the sands of the gulch. The lower well, which had previously been the main source of water supply, had partially failed, and the water supply was maintained by connecting the system with a pump at the upper or Stephens well. The two wells together were adequate to meet the demand.

144 The continuity of the complainants' holdings in the gulch is broken by property owned by J. J. Mackey, said property extending into and along the gulch and back into the hills, including a portion of the water shed. Because the complainants supply water exclusively from wells in a gulch draining a large area, and because they do not have exclusive ownership of said gulch and water shed, I made no allowance in my valuation for water rights; in fact, I find no claim on the part of the complainants in the record of the hearing before the Arizona Corporation Commission for allowance for water rights.

The complainants have engaged in the Electric Light and Power business, and have erected the necessary lines and other equipment to supply electrical energy commercially to the people of Miami. As a source of power they have installed an internal combustion oil engine connected to an electric generator at the water pumping station.

I did not include this engine or any part of the electric system in my valuation of complainants' water system. It is my opinion that any electric power used for pumping water should be charged to water operating expense. Further should electrical pumping prove more expensive than gasoline engine pumping the former should be discontinued, and the gasoline engines returned in service.

The spur track to the pumping station which I valued at $361.00, exclusive of the portion of the expense borne by the railroad company, was installed primarily for the purpose of hauling oil to the electric generating set. I recognized a certain element of value to the water plant in delivering supplies at long intervals, and therefore allocated 25% of $361.00 or $90.25 to the water system and included this amount in my valuation of the water property.

145 I included in my valuation of complainants' water property, the value of all wells used or useful at the time of the

Arizona Corporation Commission hearing. One shaft was commenced near the well which had failed at the time of the hearing, said shaft being commenced without knowledge or authority of the Arizona Corporation Commission, and after my inventory was closed. This shaft was in no way used or useful in furnishing water at the time of the hearing, nor do I find on file any advice that it has ever been completed or connected to the water system.

This shaft, together with any drifts therein, was not included in my valuation.

There is no evidence to show that the complainants in this cause have made a reasonable effort to protect the water supply against contamination.

I observed heaps of manure a short distance above the enclosure of the lower well; also the carcass of a cow which had not been disturbed between the dates of my first two trips to Miami.

BEN FERGUSON.

Subscribed and sworn to before me this 22 day of July, A. D. 1914.

[NOTARY SEAL.] E. P. WISE,
Notary Public in and for Maricopa County, State of Arizona.

My Commission expires Feb. 17, 1916.

146 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Affidavit of G. P. Bullard.

STATE OF CALIFORNIA,
County of San Diego, ss:

G. P. Bullard, being first duly sworn, deposes and says that he is Attorney General of the State of Arizona; that the legal rate of interest in the State of Arizona is fixed by Paragraph 3505 of the Revised Statutes of Arizona, 1913, which reads as follows:

"The interest for any legal indebtedness shall be at the rate of six dollars upon one hundred dollars for a year, unless a different rate is contracted for in writing; provided, however, that a different rate of interest, not to exceed ten per cent per annum, if agreed to in writing, signed by the debtor, shall be paid. A judgment rendered

on such agreement shall bear the rate of interest provided for in the agreement, and it shall be so specified in the judgment."

That affiant as attorney for the Corporation Commission at the hearing held to investigate into the reasonableness of the rates of the water utility owned by complainants, said hearing being had in the town of Miami, State of Arizona, on the 11th and 12th days of December, 1913; that present at said hearings were com-
147 plainants, represented by their counsel. Complainants took part in said hearing to the extent of cross examining all the witnesses sworn before the Commission and examined on behalf of the State. That at said hearing, though requested by W. P. Geary, chairman of the Corporation Commission, who took the testimony at said hearing, complainants declined, refused and neglected to offer any evidence as to any values of the water utility owned by complainants in said town of Miami. That at said hearing, complainants were requested to show to the Commission what use the foothills near Miami owned by complainants, and designated as the so-called water shed, had in relation to the water utility owned by complainants, but that complainants declined and refused to offer any testimony in that respect, or any testimony as to the value of said lands. That at said hearing two witnesses were examined as to the value of said lands, comprising the so-called water shed, and that one witness, H. M. Brown, a real estate agent in Miama, swore that $50.00 per acre would be a liberal appraisement of the market value for all purposes of said lands so held and owned by complainants. That at said hearing J. J. Mackey, a real estate owner in Miami, and a man experienced in the values of real estate at Miami, and the owner of a water utility at Miami, testified that the washes and draws in the foothills composing the so-called water shed of complainants might be worth about $75.00 per acre for water purposes and that the remainder of said foothills had little or no value for water shed or other water purposes; that it did not appear in evidence before the Commission the extent of the acreage of said draws or washes in said foothills, but that Mr. Mackey estimated that the acreage of the draws and washes in the Van Dyke holdings, useful for
148 water purposes did not exceed forty (40) acres. That no claim was made by complainants at said hearing before said Commission for any water right value, and the first knowledge that affiant had of any claim of such nature was upon the filing of complainant's bill of complaint herein.

Affiant further says that the investigation had before the Commission at said hearing was most complete and thorough and that the engineer for said Commission, Ben Ferguson, devoted a considerable extent of time in obtaining an accurate and correct valuation of the physical property of the water utility owned by complainants, and that Wm. Sangster, expert accountant for the Commission, spent considerable time and made a most accurate and complete report of the operating expenses and financial condition of the water utility owned by complainants at Miami. That it appeared at said hearing that the water distributed by complainants from their said water utility was solely pumped from wells sunk in a gulch near

the town of Miama, and that the source and supply of water from said wells was diffused ground water and percolating water; it did not appear from the evidence in the hearings before said Commission that any of the water supplying said wells was derived from any stream or spring or was running water.

G. P. BULLARD.

Subscribed and sworn to before me this 15th day of July, A. D. 1914.

[NOTARY SEAL.] ADELLE THOMSON,
Notary Public in and for San Diego County, State of California.

My Commission expires September 17, 1917.

ADELLE THOMSON,
Notary Public in and for the County of San Diego, State of California.

149 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-2 (Globe.)

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Affidavit of W. N. Sangster.

STATE OF ARIZONA,
County of Maricopa, ss:

W. N. Sangster, being duly sworn, deposes and says:

I am a citizen of the United States and a resident of the City of Phœnix, in the County of Maricopa, State of Arizona. That I am employed by the defendant, Arizona Corporation Commission in the City of Phœnix, in the capacity of auditor. That as such auditor I examined the books and records of the complainants, Ida A. Van Dyke and Cleve W. Van Dyke, and was assisted in this work by W. E. Brooks, auditor of the water company.

The books of the company had not been properly kept and had not been balanced since December, 1910, and for this reason it was necessary to audit each individual voucher and expenditure. At the time of such audit, it was necessary for me to have the assistance of the complainants' auditor, W. E. Brooks, and my statement of operating expenses, which follows, was agreed to by Mr. Brooks as

being correct and disclosed the true condition of complainants' accounts.

150 The office pay roll for the four companies, namely the Water Company, The Miami Telephone Company, The Miami Townsite Company and The Miami Electric Company, was $4,933.00 for the year ending September 30, 1913, and consisted of an auditor at $1,800.00 per annum; secretary, $1,800.00 per annum; bookkeeper at $1,320.00 per annum; cashier at $1,320.00 per annum; porter at $300.00 per annum and extra clerk hire at $200.00 for the year. The salary of the secretary, L. D. Van Dyke, was increased from $1,200.00 to $1,800.00 per annum on June 1, 1913. The salaries of the bookkeeper and cashier were increased from $1,200.00 to $1,320.00 per annum on August 1, 1913. The salary of the porter was increased on July 1, 1913, from $180.00 to $300.00 per annum.

This expense was charged 50% to the Water Company and 50% to the other three companies. The allowance for the Water Company per annum for office pay roll is $2,466.50 and this amount will cover all expenses. Notwithstanding the fact that the pay roll has been sufficient to secure efficient help, the work has not been handled properly from time of organization of company up to time of my audit on September 30, 1913.

Office Expenses: This includes all items of office expense, such as rent of office at $1,800.00 per annum and other smaller expenditures that had not been charged or considered by the complainants, the total amount of which was $2,502.89, divided 50% to the water utility and 50% to the other three companies, making total allowance of $1,251.44, which allowance is considered sufficient for all needs.

The allowance for material and supplies, $1,823.13 per annum, is sufficient for the economical operation of the water utility, and is, in my opinion, a very liberal sum and ample to take care of all exigencies.

151 The pay roll allowance for pumping, repairing lines and plant of $3,379.05 per annum will, in the future, be far in excess of what will be necessary to annually perform this class of work, if the accounts of complainants are properly kept, that is to say, the proper charges made as between capital expenditures and operation.

The total allowable operating expense, $8,920.12, is, in my opinion, sufficient, if not in excess of the total operating requirements.

By the proper supervision of the expenditures of the water utility, the operating costs per thousand gallons for future years can be reduced as money is being spent for office help and expenses at the rate of $3,717.94 per annum and yet no records maintained as to cost of operation, cost of additions and betterments, and amount of water produced and delivered. This is the most important work of the office and has not been taken care of, although the cost to the company has been sufficient to secure competent men for the work.

The Depreciation Reserve allowed by the Corporation Commission, of 3½% is $1,343.40 on a valuation of depreciable property

of $38,383.00 and is 3% on a valuation of $44,780.00, 2% on a valuation of $67,170.00 and 1% on a valuation of $134,340.00.

The Rate of Return, allowed by the Corporation Commission, of 10% is $4,010.50 on a valuation of $40,105.00 and is 9% on a valuation of $44,561.11, 8% on a valuation of $50,131.25, 7% on a valuation of $57,292.85, 6% on a valuation of $66,841.66, 5% on a valuation of $80,210.00, 4% on a valuation of $100,262.50, 3% on a valuation of $133,683.33, 2% on a valuation of $200,525.00 and 1% on a valuation of $401,050.00.

152 No evidence was submitted at the hearing to show that the operating expenses were not sufficient for the future needs of the water utility. The amounts allowed for both property values and operating expenses were taken from the records and books of the complainants as far as possible and are correct in every detail.

No evidence was submitted by the complainants at the hearing to show the value of land used or useful for the water company.

No records, books or vouchers were presented either to me or at the hearing showing that the water utility had an investment of $185,887.00 or an amount in excess of the valuation of $40,105.00 as allowed by the Corporation Commission.

The total income from the operation of the water utility for the year ending September 30, 1913, under the complainants' rates, was $27,047.85 and the operating expenses for the same period $8,920.12, or a net income of $18,127.73.

The net income, $18,127.73, is 45% on the valuation allowed by the Corporation Commission of $40,105.00. The net income, $18,127.73, is 10% return on a valuation of $181,277.30, 9% return on a valuation of $201,419.22, 8% return on a valuation of $226,596.62, 7% return on a valuation of $258,967.57, 6% return on a valuation of $302,128.85, 5% return on a valuation of $362,554.60, 4% return on a valuation of $453,193.25.

W. N. SANGSTER.

Subscribed and sworn to before me, this 20th day of July, A. D. 1914.

[NOTARY SEAL.] E. P. WISE,
Notary Public in and for Maricopa County, State of Arizona.

My Commission expires Feb. 17, 1916.

153 Service accepted July 29, 1914.

GEORGE J. STOENMAN,
Solicitor for Complainants.

Endorsements: In the District Court of the United States in and for the District of Arizona. Ida A. Van Dyke and Cleve W. Van Dyke, Complainants, vs. W. Paul Geary, Amos W. Cole and Frank A. Jones, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona; and

Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants. In Equity No. E-2 (Globe). Affidavits submitted by defendants in opposition to Complainants' Motion and Application for Injunction Pendente Lite herein. Filed August 5, 1914. George W. Lewis, Clerk.

154 In the District Court of the United States in and for the District of Arizona.

In Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

The application of complainants herein for an injunction pendente lite restraining the defendants and each of them from in any manner whatsoever enforcing or attempting to enforce the conditions of a certain order of the Corporation Commission of the State of Arizona dated May 1st, 1914, fixing rates to be charged by complainants for water sold and delivered by them to the inhabitants of the town of Miami, State of Arizona, and to restrain the defendants from instituting or authorizing or directing the institution of any suit or suits, action or actions against the complainants for the recovery of any penalties under and by virtue of the provisions of Chapter 90 of fthe Session Laws of 1912 of the State of Arizona known as the Public Service Corporation Act of the State of Arizona, by stipulation coming on to be heard the 10th day of August, 1912, before the Honorable William H. Sawtelle, Judge of the District Court of the United States in and for the District of Arizona, and the Honorable W. W. Morrow, Circuit Judge and the Honorable Maurice T. Dooling, District Judge, at the City of San Francisco, State of California, the plaintiffs being represented by George J. Stoneman, Reese M. Ling and F. C. Jacobs, attorneys for complainants, the defendants being represented by G. P. Bullard, Attorney General of the State of Arizona, and the Court having heard
155 and considered the pleadings and affidavits filed herein and the arguments of counsel herein for the respective parties and having duly considered the case, find therefrom that the application of complainants herein for an injunction pendente lite to restrain the defendants from in any manner whatsoever enforcing or attempting to enforce the conditions of a certain order of the Corporation Commission of the State of Arizona, dated May 1st, 1914, fixing rates to be charged by complainants for water sold and delivered by them to the inhabitants of the town of Miami, State

of Arizona, should be denied for the reason that it does not appear from the evidence submitted to this Court or the pleadings on file herein that said order was confiscatory and it does appear that the Corporation Commission of the State of Arizona has jurisdiction to enter said order. And the Court further finds that the application of complainants herein for an injunction pendente lite to restrain defendants from instituting or authorizing or directing the institution of any suit or suits, action or actions against the complainant for the recovery of any penalties under and by virtue of the provisions of Chapter 90 of the Session Laws of 1912 of the State of Arizona, should be granted for the reason that the penalties so prescribed by said Chapter 90 are unconstitutional and prevent the complainants from resorting to the State Courts for the purpose of determining the validity of the order of the Commission because they are so excessive.

It is therefore hereby ordered, adjudged and decreed, First: That until further order of the Court that complainants' application for an injunction pendente lite herein to restrain the defendants and each of them from enforcing or attempting to enforce the conditions of said order of the Corporation Commission of the State of Arizona, dated May 1st, 1914, fixing rates to be charged
156 by complainants for water sold and delivered by them to the inhabitants of the town of Miami, State of Arizona, be and the same is hereby denied.

Second. That W. Paul Geary, Amos C. Cole, Frank A. Jones, The Arizona Corporation Commission, George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona, and their successors in office, be and they are hereby enjoined and restrained from instituting and authorizing or directing the institution of any suit or suits, action or actions against the complainants for the recovery of any penalties under and by virtue of Chapter 90 of the Session Laws of 1912 of the State of Arizona known as the Public Service Corporation Act of the State of Arizona; that the injunction pendente lite ordered herein shall remain in full force and effect until the final determination of the above entitled action and proceeding in equity or until the further order of this Court.

It further appearing from the affidavit of Cleve W. Van Dyke, one of the complainants above named filed herein that subsequent to the filing of the bill of complaint herein, to-wit:—on the 23rd day of July, 1914, the Corporation Commission of the State of Arizona made an order directing the complainant Ida A. Van Dyke to extend and connect the water pipes and mains of the Ida A. Van Dyke water system to and with the water system operated by Joe V. Prochaska in the Live Oak addition to the townsite of Miami for the purpose of supplying residents of said Live Oak addition with water, and said affidavit having been made the basis of a motion filed in this court by Cleve W. Van Dyke for an order restraining said Corporation Commission from carrying into effect said order so made, and it further appearing to this Court from said affidavit

and motion that the said Ida A. Van Dyke should not until
157 the final determination of this action or until the further order of the Court be required to extend her water mains to the said Live Oak Addition or Prochaska Addition.

It is therefore further ordered that until the final determination of this action or until the further order of the Court that W. Paul Geary, Amos C. Cole, Frank A. Jones, the Arizona Corporation Commission, George P. Bullard, Attorney General of the State of Arizona and Norman J. Johnson, County Attorney of Gila County, State of Arizona, be and they are hereby enjoined and restrained from in any manner or at all in this proceeding, or in any proceedings instituted for the accomplishment of a like purpose from enforcing or attempting to enforce said order.

Done in open Court this 11th day of August, 1914.

WM. M. MORROW,
Circuit Judge.
M. T. DOOLING,
District Judge.
WM. H. SAWTELLE,
District Judge.

Service of a copy of the within order admitted on behalf of all of the defendants this 12th day of August, 1914.

G. P. BULLARD,
Attorney General of the State of Arizona, Solicitor for Defendant.

Service admitted for complainants August 12th, 1914.

GEORGE J. STONEMAN,
F. C. JACOBS,
REESE M. LING,
Solicitors for Complainant.

Endorsements: In Equity No. E-2 (Globe). Ida A. Van Dyke and Cleve W. Van Dyke, Complainants, vs. W. Paul Geary, Amos W. Cole and Frank A. Jones, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona, George P. Bullard, Attorney General of the State of Arizona and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants. Order on Application for Interlocutory Injunction. Filed August 11, 1914. George W. Lewis, Clerk.

158 In the District Court of the United States in and for the District of Arizona.

Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

George J. Stoneman and Reese M. Ling, of Phœnix, Arizona, and F. C. Jacobs, of Globe, Arizona; For the Complainants.
G. P. Bullard, of Phœnix, Arizona, Attorney General of the State of Arizona; For the Defendants.

Before Morrow, Circuit Judge, and Dooling and Sawtelle, District Judges (convened under the provisions of Section 266 of the Judicial Code, Act of March 3, 1911, Chapter 231, 36 Stat., 1162; U. S. Comp. St. Supp. 1911, page 236).

SAWTELLE, *District Judge:*

This is an application for an interlocutory injunction made in pursuance of Section 266 of the Judicial Code.

Complainants and defendants, and each and all of them, are citizens of the State of Arizona, and this suit is one arising under the Constitution and Laws of the United States, other than those requiring diversity of citizenship for Federal jurisdiction.

159 The Arizona Corporation Commission is a legally constituted board of the State of Arizona, exercising quasi judicial, legislative and ministerial functions; the defendants, Geary, Cole and Jones are the duly qualified members of said Corporation Commission; the defendant, George P. Bullard, is the Attorney General of the State of Arizona; and the defendant, Norman J. Johnson, is the County Attorney of Gila County, Arizona, that being the county wherein is situated the water system and other property in controversy herein.

The complainants, at the Town of Miami, Gila County, Arizona, have installed and are operating in the individual name of said Ida A. Van Dyke, a water system for the purpose of selling and delivering water for domestic and commercial use and for fire protection in the said Town of Miami. Said Ida A. Van Dyke is the sole owner of said water system, which, as is shown by the record herein, was established for the sole purpose of supplying the purchasers of land of the Miami Townsite Company, a corporation owned by said Ida A. Van Dyke, and her husband, Cleve W. Van

Dyke, with water, and not for the purpose of supplying the public generally with water.

On October 17th, 1913, said Arizona Corporation Commission, upon its own motion, complained of said Ida A. Van Dyke and Cleve W. Van Dyke, alleging that they were doing business as a public service corporation in distributing, delivering and selling water for domestic and commercial use and for fire protection in said Town of Miami; that the rates and charges for such water were excessive, unreasonable and unjust, and "that the services and classes of service rendered by said respondents (complain-
160 ants herein) to consumers of water in the Town of Miami, are inadequate, unsatisfactory and uncertain." Said complaint concluded with the prayer that such rates be deemed excessive, unreasonable and unjust, etc., and was signed by said Geary and Cole, respectively, Commissioners as aforesaid.

Said reprondents were cited to appear before said Corporation Commission and make answer to said complaint. In response thereto they did appear before said Corporation Commission and interposed a verified plea in bar, denying the right, authority and jurisdiction of the said Commission to assert, or attempt to assert, any right, power, authority or jurisdiction over said respondents, or either of them, upon the ground among others, that they are not, and neither of them are, the owners of a water corporation situated in the Town of Miami engaged in doing business as a public service corporation in distributing, delivering and selling water for domestic and commercial use and for fire protection in said Town of Miami, and are not acting as a corporation under the laws of the State of Arizona, or any other State, or at all; that the said Ida A. Van Dyke is the sole owner of the said water system in said Town of Miami, and the water sold and distributed was and is distributed by her as an individual and as a natural person; that the said Arizona Corporation Commission is without power or jurisdiction to investigate or control the business so owned by the said Ida A. Van Dyke personally, which said plea in bar was by said Arizona Corporation Commission overruled and denied.

Thereafter, pursuant to notice duly given, said Arizona Corporation Commission proceeded to conduct a hearing based upon the complaint theretofore filed, at which hearing respondents were represented by counsel, and subsequently on to-wit: the 1st day of May, 1914, made and entered an order:

161 "1. That the respondents constitute a water corporation, owning, controlling, operating and managing a water system for compensation in the Town of Miami, State of Arizona, and are doing business as a public service corporation in distributing, delivering and selling water for domestic, commercial and fire uses in said town.

"2. That present and existing rates and charges and each of them made, maintained and collected by said respondents are unjust, unreasonable and excessive;"

and fixing and prescribing rates to be charged and collected by the owner of said water system and by Cleve W. Van Dyke, the manager thereof.

The said Arizona Corporation Commission, after hearing all the evidence, found that said Ida A. Van Dyke was the sole owner of said water system. To quote from the opinion handed down by said Commission: "Some considerable discussion has ensued relative to the ownership of the plant. The weight of all testimony apparently shows that I. A. Van Dyke is the sole owner thereof and is doing business as a public service corporation in distributing, delivering and selling water for domestic, commercial and fire use in the Town of Miami."

In due course, said Ida A. Van Dyke and Cleve W. Van Dyke filed with said Arizona Corporation Commission a motion for a rehearing of the said order, which motion was by said Arizona Corporation Commission denied.

Thereafter they filed their motion praying for a suspension of the operation of the said order for a period of sixty days from the date the same became operative, alleging that it was their intention to apply to the State Courts for a review of said order, and further alleging that unless said order was suspended by said Commission, they would, "pending the determination of the issues raised in the motion for a re-hearing, be subject to a fine of not exceeding five thousand dollars per day or to imprisonment for each day
162 during which the petition for a review of said order shall be pending and undisposed of," which motion was by said Arizona Corporation Commission denied.

On or about the 23rd day of July, 1914, and while this case was pending in this Court said Corporation Commission after a hearing had before it made and entered an order by the terms of which said Ida A. Van Dyke was required

"Immediately to construct a water main of necessary size, with proper valves and fittings, and connect her water system in the Town of Miami with the consumers of the Live Oak Addition to said town and that she serve all consumers in said Live Oak Addition with water, charging the same rate and under the same rules as are in force in said town of Miami, and that this order be carried into effect within ten (10) days from the date hereof."

It is claimed that said Live Oak Addition is no part of the Town of Miami; that said water system was equipped and is maintained for the sole and only purpose of supplying purchasers of town lots in said Town of Miami with water and that the quantity thereof was barely sufficient for the needs of the owners and purchasers of lots in Miami Townsite.

The complainants herein have filed this bill to enjoin the enforcement of the said orders of said Corporation Commission.

(1) The jurisdiction of this Court is primarily invoked on the ground that Chapter 90 of the Laws of the First Legislature of the State of Arizona, now embraced in Chapter XI, Title 9, Revised Statutes of Arizona, 1913, is unconstitutional because the fines and penalties therein prescribed are so severe and cumulative that an enforcement of them would work a forfeiture of complainants' property, and in effect destroy the right of the complainants to appeal to the Courts for the purpose of testing either the validity of the

law or the reasonableness of any order of the Corporation
163 Commission; that by this means complainants are denied the equal protection of the law and due process of law, in contravention of their rights under the Constitution of the United States and the Constitution of the State of Arizona.

This is not the first time the jurisdiction of this Court has been invoked by reason of the objectionable features of the above statute. The same question was presented in the case of Bonbright et al. v. Geary et al., 210 Federal 44, and in that case, in referring to the contention of the complainants that the pains and penalties of the Arizona Statutes were so severe and cumulative that the Complainants could not under the provisions of the statute test the validity of the order of the Corporation Commission * * * without the danger of being subject to irreparable damage and absolute ruin, the Court, speaking through Judge Morrow, said:

"These allegations of the complaint and the provisions of the Arizona statute to which reference is made appear to bring this case within the decision of the Supreme Court of the United States in Ex parte Young, 209 U. S. 123-144; but, as the jurisdiction of this court is otherwise complete, we will not stop to discuss that feature of the case."

We think it unnecessary to go into lengthy discussion of this question. We hold that this court has jurisdiction of this cause because it involves the decision of a Federal question arising under the Constitution of the United States.

(2.) Let us now consider the above contention that said Chapter 90 above referred to is unconstitutional. As above states, the constitutionality of this Act was not considered or passed upon in the case of Bonbright, et al., v. Geary, et al., supra, for the reason that the jurisdiction of this Court was otherwise complete. It is
164 admitted that the constitutionality of this Act has not been passed upon by the Supreme Court of the State of Arizona, and that there is not now pending in said Court any case involving this question. That being so, this Court must hear and determine not only the question which concerns the jurisdiction of this Court, but also every other question herein involved.

As was said by the Supreme Court of the United States in the case of Burgess v. Seligman, 107 U. S. 20:

"When the transactions in controversy occurred, and when the case was under the consideration of the Circuit Court, no construction of the statute had been given by the State tribunals contrary to that given by the Circuit Court. The federal courts have an independent jurisdiction in the Administration of State laws, coordinate with, and not subordinate to, that of the State Courts, and are bound to exercise their own judgment as to the meaning and effect of those laws. The existence of two co-ordinate jurisdictions in the same territory is peculiar, and the results would be anomalous and inconvenient but for the exercise of mutual respect and deference. Since the ordinary administration of the law is carried on by the State Courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property

and action in the State, and have all the effects of law, and which it would be wrong to disturb. * * * Such established rules are always regarded by the Federal Courts, no less than by the State Courts themselves, as authoritative declarations of what the law is. But where the law has not been thus settled, it is the right and duty of the Federal Courts to exercise their own judgment; as they always do in reference to the doctrines of commercial law and general jurisprudence."

See also Foster's Federal Practice, Vol. 2, 4th. Ed., Page 1266, and a long list of cases there cited.

In considering this question it should be borne in mind that the complainants in due time and in good faith filed with said Corporation Commission their petition for a rehearing on said order so entered by said Corporation Commission, which was denied. Subsequently, they filed their petition for a suspension of said order to enable them to resort to the State Courts for the purpose of
165 determining the validity and reasonableness of said order. This petition was also denied.

The said Act 90 contains the following provisions:

"Section 66. After any order or decision has been made by the commission, any party to the action or proceeding, or any stockholder, or bond holder, or other party pecuniarily interested in the public service corporation affected, or the attorney general on behalf of the state, may apply for a rehearing in respect to any matters determined in said action or proceeding and specified in the application for rehearing, and the commission may grant and hold such rehearing on said matters, if in its judgment sufficient reason therefor be made to appear. No cause of action arising out of any order or decision of the Commission shall accrue in any court to any corporation or person, or the state, unless such corporation or person, of the state, shall have made, before the effective date of said order or decision, application to the commission for a rehearing.

"Such application shall set forth specifically the ground or grounds on which the applicant considers said decision or order to be unlawful. No corporation or person, or the state, shall in any court urge or rely on any ground not set forth in said application. Any application for a rehearing made ten days or more before the effective date of the order as to which a rehearing is sought, shall be either granted or denied before such effective date, or the order shall stand suspended until such application is granted or denied. Any application for a rehearing made within less than ten days before the effective date of the order as to which a rehearing is sought, and not granted within twenty days, may be taken by the party making the application to be denied, unless the effective date of the order is extended for a period of the pendency of the application. If any application for a rehearing be granted without a suspension of the order involved, the commission shall forthwith proceed to hear the matter with all despatch and shall determine the same within twenty days after final submission, and if such determination is not made within said time, it may be taken by any party to the rehearing that the order involved is affirmed. An application for rehearing shall

not excuse any corporation or person from complying with and obeying any order or decision, or any requirements of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission may by order direct. If, after such rehearing and a consideration of all the facts, including those arising since the making of the order or decision, the commission shall be of the opinion that the original order or
166 decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change, or modify the same. An order or decision made after such rehearing abrogating, changing, or modifying the original order or decision shall have the same force and effect as an original order or decision, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the commission."

Section 76 (*a*) "Any public service corporation which violates or fails to comply with any provision of the Constitution of this state or of this chapter, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement or any part or provisions thereof, of the commission, in a case in which a penalty has not hereinbefore been provided for such public service corporation, is subject to a penalty of not less than one hundred dollars nor more than five thousand dollars for each and every offense."

(*b*) "Every violation of the provisions of this chapter, or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense."

(*c*) "In construing and enforcing the provisions of this chapter, relating to penalties, the acts, omission or failure of any officer, agent or employee of any public service corporation, acting within the scope of his official duties or employment, shall in every case be and be deemed to be the act, omission or failure of such public service corporation."

Section 77. "Every officer, agent or employee of any public service corporation, who violates or fails to comply with, or procures, aids or abets any violation by any public service corporation of any provision of the constitution of this state or of this chapter, or who fails to obey, observe or comply with any order, decision, rule, direction, demand or requirement or any part or provision thereof, of the commission, or who procures, aids or abets any public service corporation in its failure to obey, observe and comply with any such order, decision, rule, direction, demand or requirement, or any part or provision thereof, in a case in which a penalty has not hereinbefore been provided for such officer, agent or employee, is guilty of a misdemeanor and upon conviction thereof is punishable by a fine not exceeding one thousand dollars, or by imprisonment in a county

jail not exceeding one year or both such fine and imprisonment."

167 Section 81. "In case any public service corporation, corporation or person shall fail to observe, obey or comply with any order, decision, rule, regulation, direction, demand or requirement, or any part or portion thereof, of the commission or any commissioner, such public service corporation, corporation or person shall be in contempt of the commission and shall be fined by the commission a sum not less than one hundred dollars nor more than five thousand dollars, to be recovered before any court of competent jurisdiction in this state.

"Procedure had in such contempt proceedings shall be the same as in courts of record in this state. The remedy prescribed in this section shall not be a bar to or affect any other remedy prescribed in this chapter, but shall be cumulative and in addition to any such other remedy or remedies."

Section 74 (*a*) "This chapter shall not have the effect to release or waive any right of action by the state, the commission or any person or corporation for any right, penalty or forfeiture which may have accrued or may hereafter arise or accrue under any law of this state."

(*b*) "All penalties accruing under this chapter shall be cumulative to each other, and a suit for the recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any criminal prosecution against any public service corporation, or any officer, director, agent or employee thereof, or any other corporation or person, or be a bar to the exercise by the commission of its power to punish for contempt."

Section 67 (*h*) "Upon final hearing the court shall enter judgment affirming, modifying or setting aside the order or decision of the commission. The provisions of the general laws of this state relating to trials of causes, so far as applicable, and not in conflict with the provisions of this chapter, shall apply to proceedings instituted in the courts of this state under the provisions of this section. No court of this state shall have jurisdiction to enjoin, restrain, suspend or delay any order or decision of the commission or to enjoin, restrain or interfere with the commission in the performance of its official duties, and the rules, regulations, orders or decrees fixed by the commission shall remain in force pending the decision of the courts; provided, that the writ of mandamus shall lie from the supreme court to the commission in all proper cases."

Section 68. "All rules, regulations, orders, charges and decrees of the commission shall remain in full force and effect pending a final decision of the court with reference thereto. No order staying, restraining or suspending any order, rule, regulation, charge, or decree of the commission shall be made by any court of this state."

168 Article XV, Section 17, of the Constitution of the State of Arizona, provides as follows:

"Nothing herein shall be construed as denying to public service

corporations the right of appeal to the courts of the state from the rules, regulations, orders or decrees fixed by the Corporation Commission, but the rules, regulations, orders, or decrees so fixed shall remain in force pending the decision of the courts."

In the Young case, supra, the Supreme Court of the United States had before it the statutes of the State of Minnesota the provisions of which are almost identical with Act 90, known as the Arizona Public Service Corporation Act, and in that case the court held that the Minnesota statutes were unconstitutional without regard to the question of the insufficiency of the rates prescribed. That decision of the Supreme Court is controlling and decisive of the question now before us. In that case it is stated that the Railroad and Warehouse Commission of the State of Minnesota.

"Made an order fixing the rates for the various railroad companies for the carriage of merchandise between stations in that state of the kind and classes specified in what is known as the 'western classification' ",

which order materially reduced the rates theretofore existing. The laws of that state, (Revised Laws of Minnesota, Section 1987), provided

"That any common carrier who violated the provisions of that section or wilfully suffered any such unlawful act or omission, when no specific penalty is imposed therefor, "if a natural person, shall be guilty of a gross misdemeanor, and shall be punished by a fine of not less than twenty-five hundred dollars, nor more than five thousand dollars for the first offense, and not less than five thousand dollars nor more than ten thousand dollars for each subsequent offense; and if such carrier or warehouseman be a corporation, it shall forfeit to the state for the first offense not less than twenty-five hundred dollars nor more than five thousand dollars, and for each subsequent offense not less than five thousand dollars nor more than ten thousand dollars, to be recovered in a civil action' ",

which said statute covers disobedience to the orders of the
169 Commission. Soon after the creation of said Commission the Legislature of said state passed an Act fixing two cents a mile as the maximum passenger rate to be charged by the railroads in that State.

"It was provided in that act that 'Any railroad company, or any officer, agent or representative thereof, who shall violate any provision of this act shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine not exceeding five thousand (5,000) dollars, or by imprisonment in the State prison for a period not exceeding five (5) years, or both such fine and imprisonment.' "

Section 6 of said Act

"directed that every railroad company in the state should adopt and publish and put into effect the rates specified in the statute, and that every officer, director, traffic manager or agent or employee of such railroad company should cause the adoption, publication and use by such railroad company of rates not exceeding those speci-

fied in the act; 'and any officer, director or such agent or employee of any such railroad company who violates any of the provisions of this section, or who causes or counsels, advises or assists any such railroad company to violate any of the provisions of this section, shall be guilty of a misdemeanor, and may be prosecuted therefor in any county into which its railroad extends, and in which it has a station, and upon a conviction thereof be punished by imprisonment in the county jail for a period of not exceeding ninety days.'"

In that case, as in the one at bar, it was contended that the penalty provisions of said laws attacked were violative of the Fourteenth Amendment of the Constitution of the United States. The Supreme Court in considering this question said,

"Another Federal question is the alleged unconstitutionality of these acts because of the enormous penalties denounced for their violation, which prevent the railroad company, as alleged, or any of its servants or employees, from resorting to the courts for the purposes of determining the validity of such acts. The contention is urged by the complainants in the suit that the company is denied the equal protection of the laws and its property is liable to be taken without due process of law, because it is only allowed a hearing upon the claim of the unconstituionality of the acts and orders in question, at the risk, if mistaken, of being subjected to such
170 enormous penalties, resulting in the possible confiscation of its whole property, that rather than take such risks the company would obey the laws, although such obedience might also result in the end (though by a slower process) in such confiscation. * * * Coming to the inquiry regarding the alleged invalidity of these acts, we take up the contention that they are invalid on their face on account of the penalties. For disobedience to the freight act the officers, directors, agents and employes of the company are made guilty of a misdemeanor, and upon conviction each may be punished by imprisonment in the county jail for a period not exceeding ninety days. Each violation would be a separate offense, and, therefore, might result in imprisonment of the various agents of the company who would dare disobey for a term of ninety days each for each offense. Disobedience to the passenger rate act renders the party guilty of a felony and subject to a fine not exceeding five thousand dollars or imprisonment in the state prison for a period not exceeding five years, or both fine and imprisonment. The sale of each ticket above the price permitted by the act would be a violation thereof. It would be difficult, if not impossible, for the company to obtain officers, agents or employees willing to carry on its affairs except in obedience to the act and orders in question. The company itself would also, in case of disobedience, be liable to the immense fines provided for in violating orders of the commission. The company, in order to test the validity of the acts, must find some agent or employe to disobey them at the risk stated. The necessary effect and result of such legislation must be to preclude a resort to the courts (either state or federal) for the purpose of testing its validity. The officers and employes could not be expected to disobey any of the provisions of the acts or orders at the risk of such fines and penalties being

imposed upon them, in case the court should decide that the law was valid. The result would be a denial of any hearing to the company. The observations upon a similar question made by Justice Brewer in Cotitng v. Kansas City Stockyards Company, 183 U. S. 79, 99, 100, 102, are very apt. At page 100 he stated: 'Do the laws secure to an individual an equal protection when he is allowed to come into court and make his claim or defense subject to the condition that upon a failure to make good that claim or defense the penalty for such failure either appro-riates all his property or subjects him to extravagant and unreasonable loss?' Again, at page 102, he says: 'It is doubtless true that the state may impose penalties, such as will tend to compel obedience to its mandates by all, individuals or corporations, and if extreme and cumulative penalties are imposed only after there has been a final determination of the validity of the statute, the question would be very
171 different from that here presented. But when the legislature, in an effort to prevent an inquiry of the validity of a particular statute, so burdens any challenge thereof in the courts that the party affected is necessarily constrained to submit rather than take the chances of the penalties imposed, then it becomes a serious question whether the party is not deprived of the equal protection of the laws.' The question was not decided in that case, as it went off on another ground. We have the same question now before us, only the penalties are more severe in the way of fines, to which is added, in the case of officers, agents or employes of the company, the risk of imprisonment for years as a common felon. * * * We hold, therefore, that the provisions of the acts relating to the enforcement of the rates, either for freight or passengers, by imposing such enormous fines and possible imprisonment as a result of an unsuccessful effort to test the validity of the laws themselves, are unconstitutional on their face, without regard to the question of the insufficiency of those rates."

See also Missouri Pacific Ry. Co. v. Tucker, 230 U. S. 240; Waters Pierce Oil Co. v. Texas, 212 U. S. 86; Standard Oil Co. v. Missouri, 224 U. S. 270; Bonbright, et al., v. Geary, el al., 210 Fed. 44.

On the authority of these cases, and on principle, we are of the opinion, and so decide, that said Act 90 of the First Legislature of the State of Arizona imposes such penalties and imprisonment as to practically deprive the complainant of the right to appeal to the court to determine the validity of the law and the orders of the Corporation Commission and is therefore unconstitutional in that particular.

(3.) Complainants' contention that the order of the Corporation Commission is confiscatory presents a mixed question of law and fact. The question is: are the rates in question so palpably unreasonable and unjust as to amount to a taking of complainants' property without compensation? If so, this court will grant relief; otherwise the rates must stand. At the hearing before the Corporation Commission which was had the 11th day of December, 1913,
172 complainants were represented by counsel, and given a fair and full opportunity to be heard, and to introduce testimony

regarding the value of said water system, and the property used and useful in connection therewith, but complainants, relying on their contention that said Corporation Commission had no jurisdiction over complainants and said utility, failed to introduce any such testimony, and refused to recognize the validity of the investigation then being conducted. It is contended by the respondents herein that as complainants did not offer any such evidence before the Commission, therefore they ought not to be allowed to say now that the valuation placed upon said property for rate-making purposes was not a fair valuation. We cannot adopt this contention. This question arose in the case of San Joaquin Co. v. Stanislaus County, which went up to the Supreme Court of the United States from this (the ninth) circuit, and in that case the Supreme Court said:

"It was suggested to be sure at the argument that it does not appear that the plaintiff offered any evidence as to water rights at the hearing before the Supervisors, and therefore it ought not to be allowed to complain now that nothing was allowed for them. But this evidently is an afterthought. In general, a party may wait until a law is passed or regulation is made and then insist upon his constitutional rights." 233 U. S. 459, and cases cited.

While this is true, and while a person is not concluded by the failure to offer testimony, still it would seem but fair to the Commission and to the Judges, who are called upon to pass upon the justness and reasonableness of the rates upon an application for an injunction pendente lite, that they should at least furnish to the Commission a full list of their property, and otherwise aid them in their efforts to fairly inventory and appraise the same. As an illustration, in this case it is not pretended that any mention whatever was made of the alleged water right during the investigation,
173 and the Commission was not even requested to include it in their estimate of the value of the property for rate making purposes. As was said by the Supreme Court of the United States while discussing a similar case:

"If a company of this kind chooses to decline to observe an ordinance of this nature and prefers rather to go into Court with the claim that the ordinance is unconstitutional, it must be prepared to show to the satisfaction of the court that the ordinance would necessarily be so confiscatory in its effect as to violate the Constitution of the United States." Knoxville v. Water Co., 212 U. S. 1, 16.

The record in this case shows that prior to the 28th day of November, 1911, Ida A. Van Dyke and Cleve W. Van Dyke "organized a corporation under the laws of Arizona known as the Miami Townsite Company, which said townsite company purchased a tract of land for the purpose of establishing a town thereon, and caused said tract of land to be surveyed into lots, blocks, streets and alleys and established a townsite business; that said land so purchased by the said Miami Townsite Company is the same land upon which is now situated a part of the town of Miami in Gila County, State of Arizona. That in order to facilitate the establishment of said town and to sell and dispose of lots of land therein, and

to provide the purchasers of lots within said town with water, and to protect the inhabitants thereof against damage and loss by fire, the said I. A. Van Dyke, in connection with said townsite business, established and developed a water system known as the I. A. Van Dyke Water System upon the land within the town of Miami and adjacent thereto, which said system is connected with the wells of water owned by said I. A. Van Dyke; that said system so established by the said I. A. Van Dyke was established and is now being conducted by her for the sole purpose of supplying purchasers of land of the Miami Townsite Company who might reside thereon, with water for domestic, commercial and fire uses, and was not established for the purpose of supplying the public generally with water;" that said Ida A. Van Dyke has also acquired certain other property, which she alleges is used and useful in connection with the operation of said water system consisting of 189.7 acres of land, 60 acres of which it is claimed constitutes a water basin, and 129.7
174 acres of which constitute a water shed, and the aggregate value of which is $73,720.00; also certain strips of land from two to four feet in width in the said town of Miami through and upon which the mains and lateral pipes of said water system are laid in Miami townsite, and the strips of land reserved for future use in the laying of mains and lateral pipes, of the alleged value of $43,884.34; also a water right of the alleged value of $20,000.00.

The first work was done on this water system in the year 1909. The water in the vicinity of Miami is developed by means of sinking wells and pumping. The testimony shows that the supply is limited and that it has been necessary to sink and develop several wells before an adequate supply for the needs of said town could be developed. As the town grew said water system was enlarged, and the water mains and laterals were extended.

The opinion and order of the Corporation Commission was based upon the evidence introduced at said hearing, including an inventory and appraisal of the property of the water system made by the engineer of the Commission, and said order recites that "no comparisons of value can be made because it is impossible to develop the book value (of the plant) or the historical value from the company's (meaning the complainants') records."

No balance sheet had ever been rendered, and the books and accounts of the water company had not been balanced since December, 1910.

The Commission then proceeded from the data available to place a valuation upon the water plant and the several units thereof for rate making purposes at the sum of $40,105.00. In arriving at these figures the Commission allowed 3½% for depreciation, and $3,500.00 for the working capital.

175 The testimony further shows that the Commission found that the office force, in addition to handling the accounts of the water company, also handled the office work of the Miami Telephone Company, Miami Townsite Company and Miami Elec-

tric Light Company, and estimated that of the total expense of doing this work, $1,251.44 should be charged to the water system.

Thereupon the Commission by its order cancelled the then existing rates, and in lieu thereof installed the rates now in question, which the Commission estimated would net the complainants $4,010.50 as interest and as a fair return upon all of the water company's tangible and intangible assets represented by the property on hand October 1st, 1913.

As above stated, it is complained that the Corporation Commission failed to include in the property of the said water system, or consider or allow, a large tract of land containing about 189 acres. It is true that the Commission did not allow anything for this property and their reasons therefore are stated in their opinion, as follows:

"The contention of the Company that the hills forming the banks of the main stream and small tributary gulches should be included in the valuation on the ground that such hills divert water into the main channel is not considered by this Commission. No effort of the company could prevent water being so diverted and it seems that the snow banks of the Pinal Mountains or the clouds could attain the same elements of value. The Company offered no direct evidence as to the value of real estate and the testimony of witness Mackey appears not to have been controverted."

The Company alleges that this tract of land was of the value of more than $38,400.00. In the affidavits submitted by complainants the same is valued at $73,720.00. It will be observed from an examination of these affidavits, especially those of L. F. Fletcher and A. Reid, both of whom are dealers in real estate, and
176 both of whom fixed the value at exactly the same figure, that they did not place a value upon this land for water purposes or show how or in what manner it was worth $73,720.00 when used in connection with said water system. They simply valued the land itself regardless of the use to which it had or might be put; in other words, they gave the total value of the land, and in arriving at that value they stated,

"I arrived at my estimate of said valuation and base the same upon the sale of real estate of the same or similar character in the vicinity of said land."

So far as the records show, this land might be underlaid with valuable mineral deposits or it might be valuable for residential or other purposes, and it seems absurd to ask that they be allowed to require the consumers of water in the townsite of Miami to pay a return upon the actual value of this land, independent of its value when used as a part of, or in connection with, said water system, and we do not find anything in the record which shows its value when so used, if it has ever been so used. It was stated in argument and not denied that the title to the land was acquired under the mineral laws of the United States. Suppose the complainants had gone back to the top of the Pinal Mountains and acquired twice or thrice the area now owned by them, would it be contended that because these vast areas form a part of the water shed and the water

finds its way ultimately into the complainants' wells that an allowance should be made for all such property? We think not, and believe that the Corporation Commission did not err when it refused to make an allowance for this property.

We are likewise of the opinion that the Commission properly disallowed the claim for $20,000.00 for a water right. The affidavits submitted do not give a definite description of the alleged
177 water right, and on the evidence submitted we are not able to determine whether in fact the complainants have made a legal appropriation of either underground or flood waters.

It is next claimed that complainants are entitled to a- allowance of $43,884.34 on certain strips of land in Miami from two to four feed wide through and upon which the water mains and lateral pipes of the system are laid, and other strips of like width so located and reserved for future use in the laying of pipes. These strips seem to have been acquired by Ida A. Van Dyke by purchase from the Townsite Company. Pretermitting any consideration of the right of that company to thus dispose of any part of the streets in Miami, it is certainly true that these strips should be of value, so far as this case is concerned only as a means of extending the pipes. It could have no value as residence or business property, for it was in the streets, and subject to the servitude of public passage, and no structure could be placed on it which would interfere with the right of the public. We think the Corporation Commission committed no error in rejecting such claim. As shown by the affidavits of witnesses R. G. Thomas and L. F. Fletcher these values were secured by a careful tabulation made as follows:

"The rights of way for the water mains are four feet in width; the rights of way for the laterals are two feet in width, and the value of the rights of way were determined upon the basis of the value of abutting property, the amount of value of the abutting property being determined in all instances upon the basis of a valuation placed upon said property by the County Assessor for the year 1914; this method was used in all parts of the townsite with the exception of a proportionately small area in the western part of the townsite. In this western portion the Assessor had failed to place a valuation upon this section in lots and blocks, but included the valuation with other property. Upon this portion I made my own estimates of
178 value based upon the Assessor's valuation of other property. In securing the unit of value, the number of square feet of the abutting property was determined and the assessed valuation placed thereon by the Assessor was divided by the number of square feet area. This unit value was then used as a factor in finding the value of the abutting right of way by multiplying the number of square feet in the abutting right of way by the unit value; the areas of the lots and the areas of the rights of way were determined by Engineer Thomas, and the values of the property determined by the County Assessor and myself."

According to this method of arriving at the valuation to be placed on said rights of way, etc., should the property along any of the streets in Miami ever reach the price of $1,000.00 per front foot, the value

of these strips of land or rights of way would increase proportionately, and the consumers of water in the town of Miami would naturally have to pay for their water such rates as would bring a fair return upon the increased valuation.

It is also claimed that the Commission failed to allow anything for a spur track of the value of $500.00, and several other items of small value, but as these items are to- small to produce any material effect in the amount of the gross aggregate, this would not affect the question of the reasonableness of the rates fixed and to be charged, and we think it unnecessary to go into details regarding them.

Complainants' counsel cite the case of Bonbright et al. v. Geary et al., supra, in which this Court said:

"The inquiry will also be aided by another rule, that if the valuation of any one of the necessary elements of the public service plant is fixed by the rate making authorities at an amount unjustly and unreasonably low in a substantial amount, or if the value of an element of substantial value used and useful in maintaining or operating such a plant is entirely ommitted by the rate fixing authority, such unreasonable and unjust valuation or omission of valuation is the taking of private property for a public use without just compensation."

179 We have carefully examined the evidence submitted and we do not find therefrom that the Corporation Commission omitted from its estimate of the valuation placed upon the property for rate making purposes any element of substantial value which should have been included therein.

(4.) The next and perhaps the most important question for consideration is whether the complainant Ida A. Van Dyke, individual owner of a water plant, is included within the provisions of the Constitution and Laws of the State of Arizona providing for the regulation of charges of public utilities such as are involved in this case. We think she is. We are also of the opinion that the Corporation Commission was clearly within its jurisdiction in prescribing rates and charged to be made and collected by said Complainant, Ida A. Van Dyke, for water furnished to the inhabitants of the Town of Miami.

The statute in question uses this language:

"The term water corporation, when used in this chapter, includes every corporation, or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any water system for compensation within this state."

Manifestly Complainant is within this definition. But it is insisted that the Constitution of the State of Arizona has defined what is a corporation, and that such definition cannot be extended by the Legislature, nor can the Legislature declare that corporations may consist of members not specifically named in the Constitution. The provisions of the Constitution which are said to be controlling are the following: Article XIV, Section 1, which is as follows:

"The term 'corporation' as used in this Article, shall be construed to include all associations and joint stock companies having any

powers or privileges of corporations not possessed by individuals or copartnerships, and corporations shall have the right to sue and be subject to be sued, in all courts, in like cases as natural persons."

180 Article XV, Section 2, provides:

"All corporations other than municipal engaged in carrying persons for hire; or in furnishing gas, oil or electricity for light, fuel or power; or in furnishing water for irrigation, fire protection or other public purposes; * * * shall be deemed public service corporations," and

Article XV, Section 3, provides:

"The Corporation Commission shall have full power to, and shall, prescribe just and reasonable classifications to be used, and just and reasonable rates and charges to be made and collected, by public service corporations within the State for service rendered therein, and make reasonable rules, regulations and orders, by which such corporations shall be governed in the transaction of business within the State, * * *"

By subdivision (Z) of said Act 90, known as the Public Service Corporation Act, the term "Public Service Corporation" is defined as including every water corporation. There is nothing in the Constitution which forbids the Legislature from declaring that a person who engages in furnishing water for compensation to a town or city or to the inhabitants thereof, shall not be considered, called and treated as a corporation. There is nothing conflicting in the provisions of the Constitution and the Statute. This is not a case of an expansion of a constitutional provisions by the Legislature, but a definition by the Legislature which is consistent with the provisions of the Constitution. There is, moreover, another provision of the Constitution which has an important bearing on this case. Article XV, Section 6, is as follows:

"The law-making power may enlarge the powers and extend the duties of the Corporation Commission, and may prescribe rules and regulations to govern proceedings instituted by and before it but, until such rules and regulations are provided by law, the Commission may make rules and regulations to govern such proceedings."

It is contended that the Legislature is not authorized to define the terms used in the Constitution. Why not? If such a definition is not inconsistent with the plain purpose and spirit of the other provisions of the Constitution, we think it may. In our opinion it is perfectly consistent and competent for the Legislature to provide that a water corporation is a public service corporation within the meaning of the law. This construction of the Constitution and the Statutes is supported by well defined rules of construction. Some of these rules are stated in the opinions of the Supreme Court of the United States, as follows:

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"There is a presumption against a construction which would render a statute ineffective or inefficient, or which would cause grave public injury or even inconvenience." Bird v. United States, 187 U. S. 118-124.

" 'To adopt such a construction would put a stop to the ordinary

business of life. The language of the act, if construed literally, evidently leads to an absurd result. If a literal construction of the words of a statute be absurd, the act must be so construed as to avoid the absurdity. The court must restrain the words. The object designated to be reac-ed by the act must limit and control the literal import of the terms and phrases employed.'" Holy Trinity Church v. United States, 143 U. S. 457-460.

See also United States v. Kirby, 7 Wall. 482, 486.

"'All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of this character. The reason of the law in such cases should prevail over its letter.'" Holy Trinity Church v. United States, 143 U. S. 457-461.

"The duty of the court, being satisfied of the intention of the legislature, clearly expressed in a constitutional enactment, is to give effect to that intention, and not to defeat it by adhering too rigidly to the mere letter of the statute, or to technical rules of construction." Oates v. National Bank, 100 U. S. 239-244.

"And it is a general rule, without exception, in construing statutes, that effect must be given to all their provisions if such a construction is consistent with the general purposes of the act and the provisions are not necessarily conflicting. All acts of the legislature should be so construed, if practicable, that one section will not defeat or destroy another, but explain and support it. When a provision admits of more than one construction, that one will be adopted which best serves to carry out the purposes of the act." Bernier v. Bernier, 147 U. S. 242-246.

182 Black, in discussing this question, quotes Judge Story as follows:—

"Every word employed in the constitution is to be expounded in its plain, obvious and common sense, unless the context furnishes some ground to control, qualify or enlarge it. Constitutions are not designed for metaphysical or logical subtilties, for niceties of expression, for critical propriety, for elaborate shades of meaning, or for the exercise of philosophical acuteness or judicial research. They are instruments of a practical nature, founded on the common business of human life, adapted to common wants, designed for common use, and fitted for common understandings. The people make them the people adopt them, the people must be supposed to read them with the help of common sense, and cannot be presumed to admit in them any recondite meaning or any extraordinary gloss." Black on Interpretation of Laws, Second Ed., Page 33.

"A definition incorporated in a statute is as much a part of the act as any other portion. It is imperative. 'The right of the legislature to prescribe the legal definitions of its own language must be conceded.' 'The right of the legislature enacting a law to say in the body of the act what the language used shall, as there used, mean, and what shall be the legal effect and operation of the law, is undoubted.'" Id. Pages 269-270.

"A statute should therefore be read with reference to its leading idea, and its general purpose and intention should be gathered from the whole act, and this predominant purpose will prevail over the literal import of particular terms or clauses, if plainly apparent, operating as a limitation upon some and as a reason for expanding the signification of others, so that the interpretation may accord with the spirit of the entire act, and so that the policy and object of the statute as a whole may be made effectual and operative to the widest possible extent. Moreover, the reading of the statute as a whole will often afford the means of correcting apparent mistakes in the wording of particular parts." Id. Pages 320-321.

The authorities sustaining this construction of the statute might be multiplied, but we deem the above sufficient. It seems to us to be giving a very narrow and technical construction to the provisions of the Constitution and the statute to say that it would not include persons because such a definition is found in the statute but is absent from the Constitution. It would seem to render
183 the Constitution ineffective and would, to a great extent defeat the beneficial purposes of the statute and the practical ends which it is intended to accomplish. There would be no difficulty whatever in a corporation transferring its property to an individual and thus destroy the jurisdiction of the Corporation Commission. Such a construction would therefore result in defeating the statute entirely until the Constitution could be amended to conform to such a view. We are therefore of the opinion that under the Constitution and the statutes passed in execution of it the complainant, Ida A. Van Dyke, is subject to the statute and the jurisdiction of the Corporation Commission.

(5.) It is also contended by complainants that that portion of said Act which purports to confer power upon said Corporation Commission to investigate individuals engaged in public service enterprises is unconstitutional and void, because the subject of the investigation of individuals contained in the body of the Act is not mentioned in the title. In support of this contention, complainants cite Section 13, Subdivision 2, Article IV, of the Constitution of the State of Arizona, which is as follows:

"Every Act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be embraced in the title."

The opinion formed and expressed by the Court on the question next preceding this one, and the authorities cited in support thereof, might be deemed a sufficient answer to this contention; however, we will consider it briefly:

The question is, does this Act violate Article IV of the
184 Constitution of the State of Arizona?—Does it embrace more than "one subject and matters properly connected therewith"? We think not. A similar provision is contained in the Constitutions of most of the States of the Union, and has been repeatedly construed by the State Courts, as well as by the Supreme

Court of the United States. We need cite only a few of the cases on the subject.

In the case of Montclair v. Ramsfell, the latter Court, in construing a similar provision in the Constitution of the State of New Jersey, said:

"The purpose of the constitutional provision was declared by the Supreme Court of New Jersey in State v. Town of Union, 33 N. J. L. 350, to be 'to prevent surprise upon legislators by the passage of bills, the object of which is not indicated by their titles, and also to prevent the combination of two or more distinct and unconnected matters in the same bill.' Further, said the court: 'It is not intended to prohibit the uniting in one bill of any number of provisions having one general object fairly indicated by its title. The unity of the object must be sought in the end which the legislative act proposes to accomplish. The degree of particularity which must be used in the title of an act rests in legislative discretion, and is not defined by the Constitution. There are many cases where the object might with great propriety be more specifically stated, yet the generality of the title will not be fatal to the act, if by fair intendment it can be connected with it.' * * * And the doctrines of the New Jersey court are in harmony with decisions of the highest courts of other states when construing similar provisions in the constitutions of their respective states. See authorities cited in Cooley's Const. Lim. 146, n. 1."

A like provision of the Constitution of the State of Illinois was considered by the Supreme Court of the United States in the case of Jonesboro City v. Cairo & St. Louis R. R. Co. In that case, the Supreme Court quoted with approval an opinion of the Supreme Court of Illinois, as follows:

"It was held in Johnson v. People, 83 Ill. 431, that the Constitution 'does not require that the subject of the bill must be specifically and exactly expressed in the title; hence we conclude that any expression in the title which calls attention to the sub-
185 ject of the bill, although in general terms, is all that is required.' People v. Lowenthal, 93 Ill. 191."

That such a constitutional requirement should be construed liberally is well settled.

"In most of the states, the constitution provides that no act of the legislature shall embrace more than one subject, and that such subject shall be expressed in the title of the act. This provision is mandatory, and if it is disregarded, the whole statute, or any separable part of it not embraced within the title, will be rejected as unconstitutional. But this requirement is construed liberally, and the courts are unwilling to defeat or embarrass legislation by putting too strained or technical a construction upon this clause of the constitution." Black's Constitutional Law, Sec. 107, P. 286.

"In regard to the degree of particularity required in the title of a statute, it is the accepted doctrine that it is sufficient if the title describes, with adequate clearness, the general purpose and scope of the act. It need not amount to an index or epitome of the statute, nor is it necessary that the title should set forth the modes,

means and instrumentalities provided in the law for its administration and enforcement. For example, a law incorporating a city, or one granting franchises to a business corporation, or one relating to the general subject of elections, or one regulating the manufacture and sale of intoxicating liquors, or one providing a general system of taxation for the state, will contain a great number of detailed and specific provisions. But if they all relate to the general subject matter of the act, and are all germane to its general purpose, it is not necessary that each should be mentioned in the title. In all such cases, a general and comprehensive title will meet the requirement of the constitution." Id. P. 286-287.

All that is required of the title to a statute is that it cover the general matter or subject of its provisions. To require every detail of its provisions to appear in the title of an Act would be to enlarge the title into an amplified synopsis, which obviously is not within its province. While it is true that this Act contains a great number of detailed provisions, still we think that they are all germane to its general purpose, and that the manifest intent
186 of the legislature and the construction of the words of the Act are in favor of the law; that the title of the Act embraces "but one subject and matters properly connected therewith."

"Every statute consists of the letter and the spirit, and by comparing the different parts with each other, from the title to the last sentence, it is found to be its own best exposition." 4 Inst. 424.

(6.) The order made and entered by the Corporation Commission on the 23rd day of July, 1914, directing the complainant, Ida A. Van Dyke, to "connect her water system in the town of Miami with the consumers in the Live Oak Addition to said town, and that she serve the consumers of said Live Oak Addition with water" was, under the facts of the case, in excess of its powers, and complainant is entitled to have an injunction against the enforcement of such order, especially in view of the following finding made by said Commission immediately after it had made a thorough investigation of said water system and prescribed rates to be charged for water by the owners of said system:

"The adequacy of the water supply has been questioned. We are of the opinion that the record would not justify a definite statement on this subject. It is true that the lower well failed for cause unknown, but both wells were supplying sufficient water through a period of drought demonstrating the adequacy of the supply."

As above stated, the record herein shows that the water system was established and is now being conducted for the sole purpose of supplying purchasers of land of the Miami Townsite Company who might reside thereon, with water for domestic and commercial use and for fire protection, and it would seem manifestly unjust to the owners of said water system as well as to the inhabitants of said townsite to require the extension of said system and the furnishing of water to the inhabitants of said Live Oak Addition or any other addition of said Townsite.

187 The facts in the case of Del Mar Water, Light & Power Co. v. Eshleman, 140 Pac. (Cal.) 595-597, are somewhat similar to the facts in this case, and in that case the Court said:

"In this state, where the territory needing water is vastly greater than the available water will supply, it is obvious that the district to be served from any source, or by any water service company, must be limited in extent. Indeed, the same is substantially true of a water service anywhere. The supply is always limited, and the territory to which it is to be served must likewise be limited, otherwise the amount served to each person might, be constantly increasing demands, be made so small that it would be of no use to any one. There can be no doubt, therefore, that the owner of a water supply may make a limited dedication of it to public use, confining the use to such territory as he sees fit. * * * Accordingly, our decisions have recognized and have repeatedly declared the right of a water company to make such limited dedication and to decline to furnish its water to person- not within the area it has undertaken to serve. Leavitt v. Lassen Irr. Co., 157 Cal. 92, 106 Pac. 404, 29 L. R. A. (N. S.) 213; Thayer v. Cal. Dev. Co., 164 Cal. 128, 128 Pac. 21; Price v. Riverside, 56 Cal. 433; Hildreth v. Montecito, 139 Cal. 29, 72 Pac. 395; 2 Wiel on Water Rights (3d Ed.) Par. 1281; Lewis, Em. Dom. (3d Ed.) Pars. 254, 313."

We are accordingly of opinion that a temporary injunction should issue forbidding each and all of the respondents to enforce the fines and penalties provided by the said Act 90 pending this suit. The evidence submitted by the complainants does not afford this Court a satisfactory basis on which to adjudicate the question of the value of the property used as a water plant, and therefore the Court cannot say that the rates prescribed by the Corporation Commission are confiscatory, and there is no basis on which an order could be made declaring them illegal. If hereafter it shall appear that under actual operation of the plant under these rates, the return allowed by such Corporation Commission operates as a confiscation of the property of complainant, Ida A. Van Dyke, she may, at the expiration of one year, again present her evidence to the Court and obtain appropriate relief on the facts then presented.

188 The Court will retain jurisdiction of the case with permission to complainant, Ida A. Van Dyke, if so advised, after the expiration of one year, to renew her application for an injunction against the rates established by the Corporation Commission as confiscatory. In the meantime the rates established will remain in force.

An order will be entered in accordance with this opinion.

Endorsement: In the District Court of the United States in and for the District of Arizona. Ida A. Van Dyke and Cleve W. Van Dyke, Complainants, *vs.* W. Paul Geary, et al., Defendants. In Equity E-2 (Globe). Filed Aug. 14th, A. D., 1914. George W. Lewis, Clerk, By Effie D. Botts, Deputy Clerk.

189 In the District Court of the United States for the District of Arizona.

Equity. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,

vs.

W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Petition of Ida A. Van Dyke and Cleve W. Van Dyke, of Miami, Gila County, Arizona, for an Order Allowing Them to Appeal from the Order of August 11th, 1914, and from the Decree Entered Herein on August 11th, 1914.

To the Honorable William H. Sawtelle, Judge of the District Court in and for the District of Arizona:

The above named Ida A. Van Dyke and Cleve W. Van Dyke, complainants in the above entitled cause feeling themselves aggrieved by the order and decree made and entered in this cause by this Honorable Court on the 11th day of August, 1914, whereby said Court denied to complainants the injunctive relief sought, do hereby appeal from said order and decree to the Supreme Court of the United States upon the grounds and for the reasons specified in the assignment of errors which is filed herewith, and pray that their appeal be allowed and that citation issue as provided by law and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the Supreme Court of the United States, sitting at Washington, District of Columbia, under the rules of such Court in such cases made and provided; and your petitioners further pray that the proper order touching the security to be required of them to perfect their appeal be made.

Respectfully submitted,

GEORGE J. STONEMAN,
Phœnix, Arizona;

190 F. C. JACOBS, *Globe, Arizona;*
REESE M. LING,
Phœnix, Arizona;
Solicitors for Ida A. Van Dyke and Cleve W. Van Dyke.

The foregoing petition is granted and the appeal therein prayed for allowed upon giving a bond upon conditions to be approved by the Judge of this Court in the sum of One Thousand ($1,000.00) Dollars.

WM. H. SAWTELLE,
Judge of the United States District Court of the District of Arizona.

Endorsements: Equity. E-2 (Globe). In the District Court of the United States for the District of Arizona. Ida A. Van Dyke and Cleve W. Van Dyke, Complainants, vs. W. Paul Geary, et al., Defendants. Petition of Ida A. Van Dyke and Cleve W. Van Dyke, of Miami, Gila County, Arizona, for an order allowing them to appeal from the order of August 11th, 1914, and from the decree entered herein on August 11th, 1914. Served with a copy of the within Petition this 31st day of August, 1914. G. P. Bullard, Solicitor for Defendants. Filed September 1, 1914. George W. Lewis, Clerk.

191 In the District Court of the United States for the District of Arizona.

Equity. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Assignment of Errors.

To the Honorable William H. Sawtelle, Judge of the District Court in and for the District of Arizona:

Now come the complainants in the above entitled cause and file the following assignment of errors upon which they will rely upon their prosecution of the appeal in the above entitled cause, from the decree made by this Honorable Court on the 11th day of August, 1914:

I.

For the reason that the learned Court erred in holding Chapter 90 of the Laws of the First Legislature of the State of Arizona constitutional and not in violation of the rights of these complainants as being in conflict with the Fourteenth Amendment of the
192 Constitution of the United States upon the ground and for the reasons as in said order and decree set forth that the term 'corporation' as used in Chapter 90 of the Laws of the First Legislature of the State of Arizona gives jurisdiction to the Corporation Commission of the State of Arizona over Ida A. Van Dyke as a natural person owning and operating a water system for compensation in the distribution of water for domestic, commercial and fire use in the town of Miami, County of Gila, State of Arizona, and holding that said Ida A. Van Dyke as a natural person was a public service corporation.

II.

That the learned Court erred by said order and decree in holding that the action of the Corporation Commission of the State of Arizona in attempting to fix rates for the distribution of water by Ida A. Van Dyke as a natural person was within the power of said Corporation Commission and not in violation of her rights under the Fourteenth Amendment of the Constitution of the United States upon the grounds and for the reasons as stated in said order and decree that said Corporation Commission had jurisdiction over said Ida A. Van Dyke as a person in the distribution by her of water in said town of Miami, notwithstanding the word 'person' was not included within the title of said Act 90.

III.

That the learned Court erred in holding in said order and decree that complainant, Ida A. Van Dyke was not deprived of her property without due process of law because of the finding in said order and decree that the rates established by said Corporation Com-
193 mission to be charged by the said Ida A. Van Dyke for the distribution by her of water in the town of Miami were not confiscatory.

IV.

That the learned Court erred in refusing to grant to complainants the injunctive relief prayed for in their bill of complaint upon the ground as stated in their bill of complaint that the effect and operation of said Chapter 90 is to deprive complainants of their right of appeal and review of the order of said Corporation Commission and to deny them relief in equity, under which conditions the effect and operation of said Act is such as to make the decision of the Commisison conclusive as to the sufficiency of the rates, and therefore unconstitutional in that it deprived complainants of their property without due process of law and denied to them the equal protection of the law.

V.

That the learned Court erred in holding by said order and decree that said Corporation Commission had jurisdiction to regulate, supervise and control the water system operated by Ida A. Van Dyke as an individual, notwithstanding the fact as it appears from the bill of complaint and not denied by the defendants that the Ida A. Van Dyke water system was organized solely for the purpose of facilitating the sale of lots in the Miami townsite in supplying the purchasers of land therein and thereof with water.

Wherefore, complainants pray that said order and decree denying to complainants an interlocutory injunction against the defendants above named and the Corporation Commission of the
194 State of Arizona to prevent said Corporation Commission from establishing rates to be charged by Ida A. Van Dyke as a natural person in the distribution of water for domestic, commercial and fire use in the town of Miami, County of Gila, State of

Arizona, and the enforcement of said rates, be reversed and that an injunction be issued against said defendants above named and said Corporation Commission restraining and prohibiting said defendants and said Corporation Commission from fixing or attempting to fix rates to be charged by the said Ida A. Van Dyke in the distribution by her of water as aforesaid or from attempting to enforce any of said rates and from in any manner or at all interfering with the said Ida A. Van Dyke and the business conducted by her as a natural person in the distribution of water in said town of Miami, and that complainants, Ida A. Van Dyke and Cleve W. Van Dyke have such other relief in the premises as to this Court may seem proper.

GEORGE J. STONEMAN,
Phœnix, Arizona:
F. C. JACOBS, *Globe, Arizona;*
REESE M. LING,
Phœnix, Arizona;
Solicitors for Complainants,
Ida A. Van Dyke and Cleve W. Van Dyke.

Endorsements: Equity E-2 (Globe). In the District Court of the United States for the District of Arizona. Ida A. Van Dyke and Cleve W. Van Dyke, Complainants, vs. W. Paul Geary, et al., Defendants. Assignment of Errors. Served with a copy of the within Assignment of Errors this 31st day of August, 1914. G. P. Bullard, Solicitor for Defendants. Filed Sept. 1, 1914. George W. Lewis, Clerk.

195 In the District Court of the United States in and for District of Arizona.

In Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members of the Corporation Commission of the States of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General for the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Bond on Appeal.

Know all men by these presents:

That Ida A. Van Dyke and Cleve W. Van Dyke, as principals, and L. D. Van Dyke and Walter Harris, as sureties, of the County of Gila, State of Arizona, are held and firmly bound unto W. Paul Geary, Amos W. Cole and Frank A. Jones, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney Gen-

eral of the State of Arizona; and Norman J. Johnson, County Attorney of Gila County, State of Arizona, the defendants named in the above entitled action in the sum of One Thousand Dollars ($1,000.00) lawful money of the United States to be paid to them and their respective executors, administrators and successors; to which payment well and truly to be made we bind ourselves, and each of us jointly and severally and each of our heirs, executors and administrators by these presents.

Sealed with our seals and dated this 2nd day of September, 1914.

196 Whereas, the above named Ida A. Van Dyke and Cleve W. Van Dyke have prosecuted a writ of error to the Supreme Court of the United States to reverse the decree of the District Court for the District of Arizona in the above entitled action;

Now therefore, the condition of this obligation is such that if the above named complainants, Ida A. Van Dyke and Cleve W. Van Dyke shall prosecute their said appeal to effect and answer all costs, if they fail to make good their plea, then this obligation to be void; otherwise to remain in full force and effect.

IDA A. VAN DYKE,
CLEVE W. VAN DYKE,
Principals.

L. D. VAN DYKE,
WALTER HARRIS,
Sureties.

STATE OF ARIZONA,
County of Gila, ss:

On the 2nd day of September, 1914, personally appeared before me L. D. Van Dyke and Walter Harris, respectively known to me to be the persons described in and duly executed the foregoing instrument as parties thereto, and respectively acknowledged each for himself they *they* executed the same as their free act and deed for the purposes therein set forth.

And the said L. D. Van Dyke and Walter Harris, being respectively by me duly sworn says, each for himself and not one for the other, that he is a resident and householder in the said County of Gila, and that he is worth the sum of One Thousand Dollars over and above his just debts and liabilities and property exempt from execution.

L. D. VAN DYKE.
WALTER HARRIS.

197 Subscribed and sworn to before me this 2nd day of September, 1914.

My commission expires Feb. 19, 1916.

[NOTARY SEAL.]

M. BLEDSOE,
Notary Public.

The within bond is approved as to sufficiency and form this 9th day of September, 1914.

WM. H. SAWTELLE, *Judge.*

Endorsements: In the District Court of the United States, in and for the District of Arizona. Ida A. Van Dyke and Cleve W. Van Dyke, Complainants, vs. W. Paul Geary, et al., Defendants. In Equity, No. E-2 (Globe). Bond on Appeal. Filed Sept. 9, 1914. George W. Lewis, Clerk. By Effie D. Botts, Deputy.

198 In the District Court of the United States for the District of Arizona.

Equity. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members of the Corporation Commission of the States of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Præcipe.

To the Clerk of the United States District Court for the District of Arizona:

Upon allowance by the Honorable Judge of the above entitled Court of the appeal by complainants therein, from the decree and order of said Court, entered in the above entitled cause, please prepare and transmit to the Clerk of the Supreme Court of the United States, properly authenticated by you, the following portions of the record to be included in the transcript on such appeal:

1. Amended bill of Complaint;
2. Process and return showing jurisdiction;
3. Motion of defendants to dismiss;
4. Affidavits submitted by complainants in support of their bill of complaint;
5. Affidavits submitted by defendants in support of their motion to dismiss;
6. Opinion and Order of the Court;
7. Petition for appeal with allowance of Judge;
8. Assignment of errors;
9. Bond.
10. Citation in appeal and proof of service thereof;
11. Certificate of Clerk of United States District Court for Arizona.

Respectfully,

GEORGE J. STONEMAN,
F. C. JACOBS,
REESE M. LING,
Solicitors for Complainants,
Ida A. Van Dyke and Cleve W. Van Dyke.

199 Endorsements: Equity E-2 (Globe). In the District Court of the United States for the District of Arizona. Ida A. Van Dyke and Cleve W. Van Dyke, Complainants, vs. W. Paul Geary, et al., Defendants. Præcipe. Served with a copy of the within Præcipe this 21st day of August, 1914. G. P. Bullard, Colicitor for Defendants. Filed September 1, 1914. George W. Lewis, Clerk.

200 In the United States District Court for the District of Arizona.

In Equity. No. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members of the Corporation Commission of the States of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Certificate of Clerk U. S. District Court to Transcript of Record.

UNITED STATES OF AMERICA,
District of Arizona, ss:

I, George W. Lewis, Clerk of the United States District Court, for the District of Arizona, do hereby certify the one hundred ninety-nine (199) typewritten pages, numbered from one (1) to one hundred ninety-nine (199), inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause as are necessary to the hearing of said cause, and as is stipulated for by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on appeal from the judgment of said United States District Court for the District of Arizona, to the Supreme Court of the United States.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and
201 paid in my office by or on behalf of the plaintiff for the preparation and certification of the typewritten transcript of record issued to the United States Supreme Court in the above entitled cause, to-wit:

Clerk's fee for making typewritten transcript of record, 599 folios at 30¢ per folio	$179.70
Certificate of Clerk to typewritten transcript of record, 3 folios at 30¢ per folio	.90
Seal to said certificate	.40
	$181.00

I hereby certify that the above cost for preparing and certifying record, amounting to $181.00, has been paid to me by attorneys for the plaintiffs.

I further certify that I hereto attach and herewith transmit the original Citation issued in this cause, together with a certified copy of an Order Extending Time for Filing Transcript.

In witness whereof, I have hereto set my hand and affixed the Seal of said District Court at Tucson, in said District, this 29th day of October, A. D. 1914.

[Seal United States District Court, District of Arizona.]

GEORGE W. LEWIS, *Clerk*,
By EFFIE D. BOTTS,
Deputy Clerk.

202 In the District Court of the United States for the District of Arizona.

Equity. E-2 (Globe).

IDA A. VAN DYKE and CLEVE W. VAN DYKE, Complainants,
vs.
W. PAUL GEARY, AMOS W. COLE, and FRANK A. JONES, Members of the Corporation Commission of the States of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona, and Norman J. Johnson, County Attorney of Gila County, State of Arizona, Defendants.

Citation.

UNITED STATES OF AMERICA, *ss:*

To W. Paul Geary, Amos W. Cole, and Frank A. Jones, Members of the Corporation Commission of the State of Arizona; The Corporation Commission of the State of Arizona; George P. Bullard, Attorney General of the State of Arizona; Norman J. Johnson, County Attorney of Gila County, State of Arizona, and George P. Bullard, Solicitor for Defendants, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at the City of Washington, in the District of Columbia on the 31st day of October, A. D. 1914, pursuant to an order allowing an appeal filed and entered in the Clerk's Office of the District Court of the United States for the District of Arizona, from a decree denying to complainants relief by injunction as prayed for, filed and entered on the 11th day of August, 1914, in that certain suit being in Equity E-2, wherein Ida A. Van Dyke and Cleve W. Van Dyke are
203 complainants, and *and* you are defendants and appellees to show cause, if any there be, why the decree rendered against the appellants as in said order allowing appeal mentioned, should

not be corrected and why justice should not be done to the parties in that behalf.

Witness the Honorable William H. Sawtelle, United States District Judge for the District of Arizona, this 1st day of September, 1914 and of the Indep-ndence of the United States the one hundred and thirty eighth.

WM. H. SAWTELLE,
U. S. District Judge for the District of Arizona.

204 Service of the within citation upon The Arizona Corporation Commission is hereby acknowledged and accepted by me as Chairman of said Commission this 11th day of September, 1914.

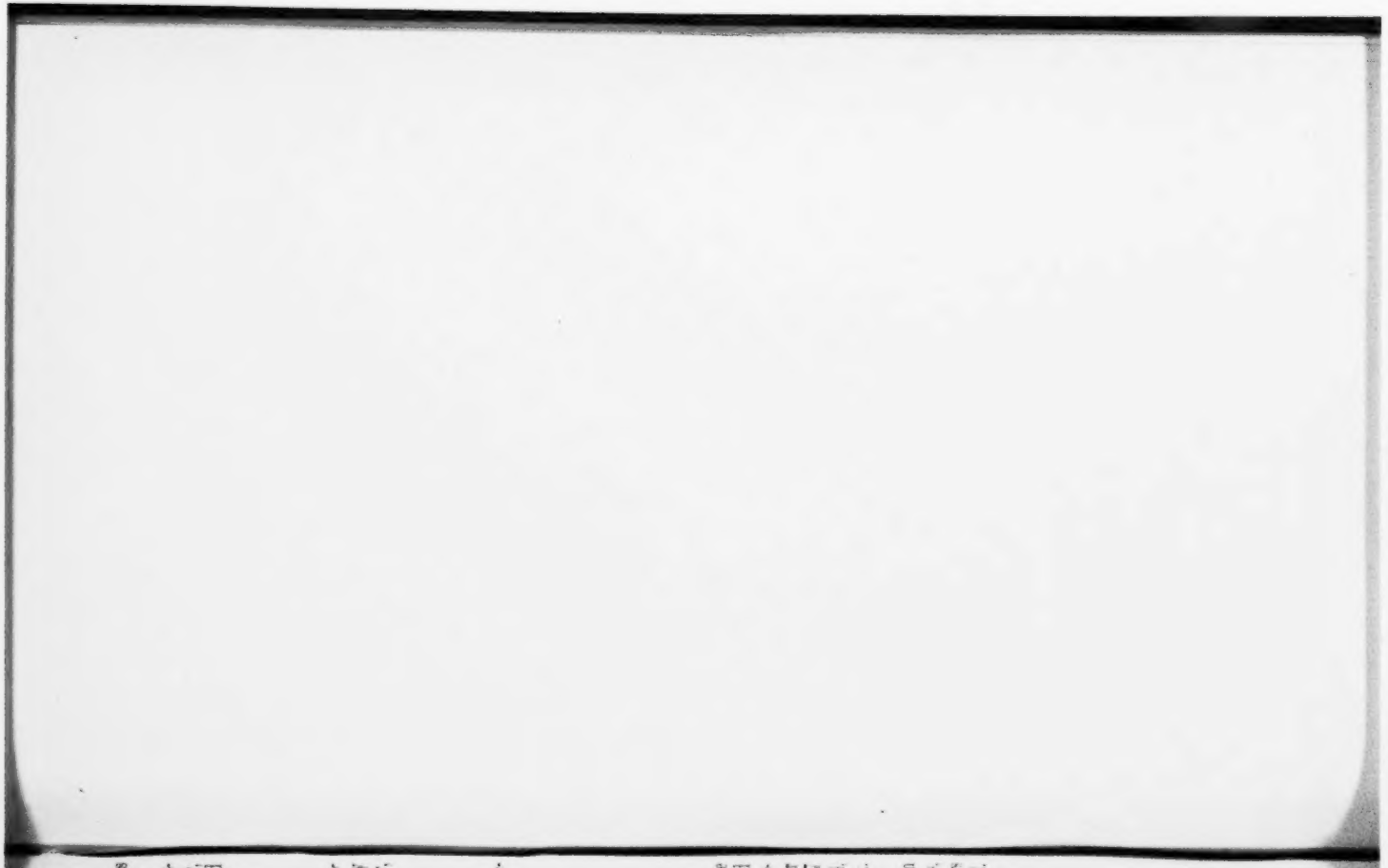
W. P. GEARY, *Chairman.*
D.

Service of the within citation is hereby acknowledged and accepted by me this 11th day of September, 1914.

W. P. GEARY.
A. W. COLE.
F. A. JONES.
G. P. BULLARD.
NORMAN J. JOHNSON.
By F. A. SHAFFER, *Deputy.*

[Endorsed:] Equity. E-2 (Globe). In the District Court of the United States for the District of Arizona. Ida A. Van Dyke, and Cleve W. Van Dyke, Complainants, vs. W. Paul Geary, et al., Defendants. Citation. —— ——, Attorney General and Solicitor for Defendants. Law Offices Stoneman & Ling, 405, 406 and 407 Goodrich Block, Phœnix, Arizona. Filed Sept. 16, A. D. 1914, at — M. George W. Lewis, Clerk, by Effie D. Botts, Deputy Clerk.

Endorsed on cover: File No. 24,442. Arizona D. C. U. S. Term No. 286. Ida A. Van Dyke and Cleve W. Van Dyke, appellants, vs. W. Paul Geary, Amos W. Cole, and Frank A. Jones, Members of The Corporation Commission of the State of Arizona, et al. Filed November 17th, 1914. File No. 24,442.



Office Supreme Court, U. S.
FILED
OCT 9 1916
JAMES D. MAHER
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1916.

No. 52.

IDA A. VAN DYKE ET AL., APPELLANTS,

vs.

W. PAUL GEARY ET AL., MEMBERS OF THE CORPORATION COMMISSION OF ARIZONA, ET AL.

MOTION TO PASS THE CASE.

Come now counsel for the appellants, and as well on behalf of counsel for the appellees, and move the Court to pass this cause when reached upon the call of the docket, and for cause show that it is probable that the same will be reached in November at about the time of the election; that it will not be convenient for counsel for the appellants to argue the case at that time, and it will be a hardship upon counsel for the appellees, the Attorney General for Arizona, and his assistants, to brief the case and argue it at that time because their office is,

and has been, overwhelmed with election and other State business, and to come to Washington at that time would prevent them from being in Arizona at the time of the election.

There is filed herewith a stipulation agreeing to pass the case.

Respectfully submitted,

WILLIAM C. PRENTISS,
F. C. JACOBS,
Attorneys for Appellants.

Office Supreme Court, U. S.
FILED
MAR 3 1917
JAMES D. MAHER
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 52.

IDA A. VAN DYKE AND CLEVE W. VAN DYKE,
APPELLANTS,

vs.

W. PAUL GEARY, AMOS W. COLE, AND FRANK A. JONES, MEMBERS OF THE CORPORATION COMMISSION OF THE STATE OF ARIZONA, ET AL.

APPELLANTS' MOTION TO RESTORE CASE TO CALL.

Come now the appellants, by their attorneys, and move the court to restore this case to the call for argument, and for cause show that in October, 1916, the same was passed under rule 26, and that counsel for appellees, although thereunto often requested, have failed to sign a request to the clerk to restore the case to the call pursuant to said rule.

WILLIAM C. PRENTISS,
F. C. JACOBS,
Attorneys for Appellants.

DISTRICT OF COLUMBIA, *ss:*

William C. Prentiss, being duly sworn, says that he is one of the attorneys for the appellants in the above-entitled cause, and that by letters to Hon. Wiley Jones, Attorney General of Arizona, under dates of December 23, 1916, January 9, 1917, and January 22, 1917, the affiant requested him to sign a request to the clerk to restore the case to the call for argument, but that he has failed so to do; that by letter addressed to Mr. Jones under date of February 8, 1917, the affiant gave notice that he would, on March 6, 1917, move the court to restore the case to the call; that by letter under date of February 13, 1917, Mr. Jones advised the affiant that it would be impossible for him to leave for Washington before March 15th, and asking if it would be agreeable for the case to be set between March 20th and April 1st, to which the affiant replied, again requesting him to sign a joint request, and advising him that unless such joint request were received he would ask the court to set the case to follow the cases already assigned for March 6th, and that in that event it would probably be reached not earlier than March 20th, and that the affiant has not received such joint request or been advised that such a request has been forwarded.

WILLIAM C. PRENTISS.

Subscribed and sworn to before me this first day of March, 1917.

[SEAL.] LEONARD F. RUOFF,
Notary Public.

Office Supreme Court, U. S.
FILED
JAN 2 1917
JAMES D. MAHER
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1916.

No. 52.

IDA A. VAN DYKE AND CLEVE W. VAN DYKE
APPELLANTS,

vs.

W. PAUL GEARY, AMOS W. COLE, AND FRANK A. JONES, MEMBERS OF THE CORPORATION COMMISSION OF THE STATE OF ARIZONA, ET AL.

BRIEF FOR APPELLANTS.

WILLIAM C. PRENTISS,
F. C. JACOBS,
Attorneys for Appellants.

J. D. MILANS & SONS, 707 EIGHTH STREET, N. W., WASHINGTON, D. C.



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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1916.

No. 52.

IDA A. VAN DYKE AND CLEVE W. VAN DYKE
APPELLANTS,

vs.

W. PAUL GEARY, AMOS W. COLE, AND FRANK A. JONES, MEMBERS OF THE CORPORATION COMMISSION OF THE STATE OF ARIZONA, ET AL.

BRIEF FOR APPELLANTS.

STATEMENT.

The fundamental, though not the only, question presented is whether or not the Corporation Commission of the State of Arizona had jurisdiction over the appellant Ida A. Van Dyke, individual owner of a water system established by her for the purpose of furnishing water only to purchasers of lots from the Miami Townsite Company, of which she is the principal owner. The appellant Cleve W. Van Dyke is the manager of the water system.

In 1909, prior to the admission of Arizona as a State, the appellants organized the Miami Townsite Company to handle a tract of land which they had acquired for townsite purposes. In order to facilitate development and sale of lots, the appellant Ida A. Van Dyke, in her capacity as an individual, established, wholly upon land owned by her, the water system in question for the purpose of conveying water from what was known as the Granite Springs and furnishing the same to purchasers of lots in said town for domestic, commercial and fire protection uses. As gradually developed and extended, the water system embraces wells, pumping machinery, storage tanks, conduits, service pipes, etc. Rates of charges for water were established and accepted and paid by purchasers and owners of lots, who were required to enter into written contracts for water service.

With the growth of the town the income of the water system had increased until in or about the year 1913 the gross annual income was $28,832.65 and the net income $9,511.49, as figured by the accountant of the water system (Record, p. 88).

On November 28, 1911, Arizona was admitted as a State and its Constitution, which took effect on that date, by Article XIV, provided a basic law governing corporations, and, by Article XV, created a Corporation Commission. As one branch of the fundamental question presented involves the effect of these Articles of the Constitution, we print them in full as an appendix hereto. The immediately pertinent provisions are as follows:

Article XIV.

Section 1. The term "corporation," as used in this article, shall be construed to include all associations and joint-stock companies having any powers or privileges of corporations not possessed by individuals or co-partnerships, and all corporations shall have the right to sue and shall be subject to be sued, in all courts, in like cases as natural persons.

Section 2. Corporations may be formed under general laws, but shall not be created by special acts. Laws relating to corporations may be altered, amended, or repealed at any time, and all corporations doing business in this State may, as to such business, be regulated, limited, and restrained by law.

Section 16. The records, books, and files of all *public service corporations*, State banks, building and loan associations, trust, insurance, and guaranty companies shall be at all times liable and subject to the full visitorial and inquisitorial powers of the State, notwithstanding the immunities and privileges secured in the declaration of rights of this constitution to persons, inhabitants, and citizens of this State.

Article XV.

Section 1. *A corporation commission is hereby created* to be composed of three persons, etc.

Section 2. All corporations other than municipal engaged in carrying persons or property for hire; or in furnishing gas, oil, or electricity for light, fuel, or power; or in furnishing water for irrigation, fire protection, or other public purposes; or in furnishing, for profit,

hot or cold air or steam for heating or cooling purposes; or in transmitting messages or furnishing public telegraph or telephone service, and all corporations other than municipal, operating as common carriers shall be deemed public-service corporations.

Section 3. The *corporation commission* shall have full power to and shall prescribe just and reasonable classifications to be used, and just and reasonable rates and charges to be made and collected, by *public-service corporations* within the State for service rendered therein, and make reasonable rules, regulations, and orders by which such corporations shall be governed in the transaction of business within the State, and may prescribe the forms of contracts and the systems of keeping accounts to be used by such *corporations* in transacting such business, and make and enforce reasonable rules, regulations, and orders for the convenience, comfort, and safety, and the preservation of the health of the employees and patrons of such corporations: * * *

The immunities and privileges secured by the declaration of rights referred to in Article XIV, Sec. 16, are found in Article II, and so far as appear to be in any wise pertinent, are, as follows:

Section 3. The Constitution of the United States is the supreme law of the land.

Section 4. No persons shall be deprived of life, liberty, or property without due process of law.

Section 8. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

Section 10. No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.

Section 17. Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches, on or across the lands of others for mining, agricultural, domestic, or sanitary purposes No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner, and no right of way shall be appropriated to the us of any corporation other than municipal, until full compensation therefor be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

Section 25. No bill of attainder, ex post facto law, or law impairing the obligation of a contract shall ever be enacted.

Section 32. The provisions of this constitution are mandatory, unless by express words they are declared to be otherwise.

Aricle IV, Part II, Sec. 13, provided:

Every act shall embrace but one subject and matters properly connected therewith,

> which subject shall be expressed in the title; but if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be embraced in the title.

The first legislature of the new State passed what is known as the Arizona Public Service Corporation Act, designated Chapter 90 and entitled "An Act relating to Public Service Corporations, Providing for the Regulation of the Same, Fixing penalties for the Violation Thereof, and Repealing Certain Acts, With an Emergency Clause." This act among other things contained the following provisions (Sec. 2):

> (w) The term "Water system," when used in this Act, includes all reservoirs, tunnels, shafts, dams, dikes, headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures, and personal property, owned, controlled, operated or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage, apportionment, or measurement, or water for power, fire protection, irrigation, reclamation, or manufacturing, or for municipal, domestic, or other beneficial use.
>
> (x) The term "Water corporation," when used in this Act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any water system for compensation within this State.
>
> (z) The term "Public service corporation,"

> when used in this Act, includes every common carrier, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, and warehouseman, as these terms are defined in this section, and each thereof is hereby declared to be a public service corporation and to be subject to the jurisdiction, control, and regulation of the Commission and to the provisions of this Act.

The Act also contained provisions imposing drastic penalties for failure or refusal to comply with orders of the Commission, which, by the court below, were held to be unconstitutional. See opinion, Record, pages 109-114.

The Act in question was in large measure taken from the Public Utilities Act of California. The California act, however, in respect of subjecting individuals operating water or power utilities to control by the public utilities (railroad) commission, was sanctioned by specific and plenary constitutional authority contained in Section 23 of Article XII of the California Constitution, which provided:

> "Every private corporation, *and every individual* or association of individuals, owning, operating, managing, or controlling any commercial railroad, interurban railroad, street railroad, canal, pipe line, plant or equipment, or any part of such railroad, canal, pipe line, plant or equipment within this State, for the transportation or conveyance of passengers, or express matter, or freight of any kind, including crude oil, or for the transmission of telephone or telegraph messages, or for the

> production, generation, transmission, delivery or furnishing of heat, light, water or power or for the furnishing of storage or wharfage facilities, either directly or indirectly, to or for the public, and every common carrier, is hereby declared to be a public utility subject to such control and regulation by the railroad commission as may be provided by the legislature, and every class of private corporations, *individuals*, or associations of individuals hereafter declared by the legislature to be public utilities shall likewise be subject to such control and regulation, * * * and the right of the Legislature to confer power upon the railroad commission of public utilities is hereby declared to be plenary and to be unlimited by any provision of this Constitution."

As stated, we contend that the jurisdiction of the Arizona Commission is limited by the Arizona Constitution to the control of *Corporations*. We also contend, with equal conviction, that said Arizona Act 90, in so far as it undertakes to extend the control of the Commission to individuals, is violative of Article IV, Part 2, Section 13 of the Arizona Constitution (supra) in that such purpose is not expressed in the title and is such a radical invasion of individual rights as not to be reasonably regarded as properly connected with the control of corporations. And we also contend that Mrs. Van Dyke's water system is of such private and non-public character as not to be subject to governmental rate-fixing.

On October 17, 1913, the Arizona Corporation Commission, proceeding upon the assumption that

Act 90, *supra*, invested it with jurisdiction in the premises, upon its own motion filed before itself a complaint against Granite Springs Water Company, Incorporated, C. W. Van Dyke and Ida A. Van Dyke, as respondents, alleging that the respondents were the owners of a water corporation situate in the town of Miami and were doing business as a public service corporation in distributing, delivering and selling water for domestic, commercial and fire use in said town of Miami, and that their rates and charges were excessive, unreasonable and unjust (Ex. A, Record, p. 19).

The appellants Cleve W. Van Dyke and Ida A. Van Dyke appeared and filed a plea to the jurisdiction of the Commission setting up that they were not the owners of a water corporation termed the Granite Springs Water Co., Inc., nor any water corporation whatsoever, and that they were not acting as a corporation under the laws of Arizona, or any other State, or at all; that the jurisdiction of the Commission was limited to control and supervision of corporations; and that Act 90 of the first legislature was void in so far as it undertook to extend the jurisdiction of the Commission to persons.

This plea was over-ruled by the Commission which thereupon proceeded, after notice, to an investigation of the Van Dyke water system.

The appellants, standing upon their plea to the jurisdiction, through counsel cross-examined witnesses produced by the Commission, but offered no evidence before the Commission.

On May 1, 1916, the Commission filed a report (Ex. C, Record, p. 23), wherein the value of the

plant for rate-making purpose was fixed at $40,105 (Record, pp. 29, 30), the amount of allowable annual expenditures placed at $8,920.12 (Record, p. 35), and a schedule of reduced rates prescribed, figured so as to yield a net return of 10 per cent (or $4,-010.50) upon the valuation for rate-making purposes (Record, pp. 34, 39). By order No. 8 (Record, p. 40), the Commission undertook to cancel and annul all service contracts then existing between the appellants and consumers for water service not in conformity, in respect of rates, with the provisions of the order of the Commission.

Thereupon the appellants filed a motion for rehearing (Ex. D, Record, p. 40), wherein the objections to the jurisdiction of the Commission were renewed and exception was taken to the order cancelling pre-existing contracts as impairing the obligation of contracts, and, in detail, to the various findings and rulings of the Commission and its failure, in valuing the plant, to make allowance for certain substantial items to which reference will be made herein.

The motion for rehearing was denied and thereupon the petitioners filed an application for suspension of the order to enable them to apply to the proper State court for a review of said order and for injunction restraining the Commission from proceeding further for want of jurisdiction. This application was also denied (Ex. E, Record, p. 47).

Thereupon the appellants filed in the United States District Court for the District of Arizona, the Bill of Complaint herein, seeking injunction against the members of the Commission, the Attor-

ney-General of Arizona and the County Attorney of Gila County, to restrain them from attempting to enforce the conditions of the order of the Commission, or instituting, authorizing, or directing the institution of any suits against the appellants for the recovery of any penalties under the provisions of said Act 90, and a decree declaring the order of the Commission to be unreasonable, unfair and unjust, and void as in contravention of the Constitution of the United States and the Constitution of Arizona. See amended Bill of Complaint, Record, p. 1.

In support of their application for injunction *pendente lite,* the plaintiffs filed affidavits (Record, pp. 52-57).

The defendants filed a motion to dismiss (Record, p. 50) and counter affidavits (Record, pp. 92-101), and the plaintiffs filed further affidavits in reply (Record, pp. 58-91).

Pursuant to Sec. 266 of the Judicial Code, the application for injunction pendente lite, was heard before a Circuit Judge and two District Judges, who, pursuant to an opinion filed in the case (Record, p. 105), entered an order (Record, p. 102) restraining the defendants from attempting to enforce the penalties provided by the Public Service Corporation Act, but denying the application for injunction restraining the defendants from enforcing the conditions of the order of the Corporation Commission fixing rates to be charged by the complainants.

The case is here on appeal from that order, under Section 266 of the Judicial Code, and presents the question of whether the Public Service Corporation

Act, in extending the jurisdiction of the Corporation Commission to individuals, or if applicable to Mrs. Van Dyke, is unconstitutional, and, in the alternative, the question of whether the rates fixed by the Corporation Commission are confiscatory because of the failure of the Commission, in valuing the plant, to make allowance for the substantial items before mentioned.

ARGUMENT.

The Constitution of Arizona Limits the Jurisdiction of the Corporation Commission to Control Over Corporations.

The jurisdiction of the Corporation Commission is prescribed by Section 3 of Article XV:

> "The Corporation Commission shall have full power to and shall prescribe just and reasonable classifications to be used, and just and reasonable rates and charges to be made and collected, by *public service corporations* within the State for service rendered therein, and make reasonable rules, regulations, and orders by which such *corporations* shall be governed in the transaction of business within the State, and may prescribe the forms of contracts and the systems of keeping accounts to be used by such *corporations* in transacting such business, and make and enforce reasonable rules, regulations, and orders for the convenience, comfort, and safety, and the preservation of the health of the employees and patrons of such corporations * * *"

Section 2 of Article XV defines "public service corporations:"

> "All *corporations* other than municipal engaged in carrying persons or property for hire; or in furnishing gas, oil, or electricity for light, fuel, or power; or in furnishing water for irrigation, fire protection, or other public purposes; or in furnishing, for profit, hot or cold air or steam for heating or cooling purposes; or in transmitting messages or furnishing public telegraph or telephone service, and all *corporations* other than municipal, operating as common carriers shall be deemed *public-service corporations.*"

The Appellees contended, and the Court below held, that the term "corporation" as used in the Sections quoted, must be construed to include *persons* as well as corporations.

But that construction is repelled and rendered impossible by the definition of "corporation" in Article XIV.

Section 1 of Article XIV provides:

> "The term '*corporation,*' as used in this article, shall be construed to include all *associations* and *joint-stock* companies having any powers or privileges of corporations *not possessed by Individuals or Co-partnerships,* and all corporations shall have the right to sue and shall be subject to be sued, in all courts, in like cases as natural persons."

The appellees contended below that this definition, being expressly limited to the term "corpora-

tion'' as used in that Article (XIV), was not controlling of the use of the term ''corporation'' or ''public service corporation'' in Article XV; but that contention is rendered untenable by Section 16 of Article XIV, which provides:

> ''The records, books, and files of all *public service corporations*, State banks, building and loan associations, trust, insurance, and guaranty companies shall be at all times liable and subject to the full visitorial and inquisitorial powers of the State, notwithstanding the immunities and privileges secured in the declaration of rights of this constitution to persons, inhabitants, and citizens of this State.''

The term ''Public Service Corporations,'' as thus used in Section 16 of Article XIV, is by Section 1 of Article XIV necessarily limited in application to corporations proper, and it is unthinkable that, in the face of such specific definition, the framers of the Constitution could have intended the terms ''corporation'' and ''public service corporation'' in Section 2 of Article XV to embrace individuals.

Notwithstanding, the appellees contended below that the framers of the Constitution had in view the utility itself rather than the ownership thereof and intended to give the Corporation Commission control over all public utilities, and that, therefore, the terms ''corporation'' and ''public service corporation'' in Article XV must be extended to include an individual owner of a public utility.

But, if utilities owned by individuals had been in contemplation and intent, it would have

been easy to include persons within the definition of public service corporations in Section 2 of Article XV, which would have necessitated like modification of Section 16 of Article XIV.

On the other hand, that the framers of the Constitution used terms and definitions advisedly is apparent from Section 1 of Article XIV, where they were careful to extend the term "corporation" to include "*associations and joint-stock companies having any powers or privileges of corporations not possessed by individuals or co-partnerships.*"

The framers of the Constitution must be presumed to have had before them as precedents the Constitutions of other States, particularly the then recent new Constitution of the adjoining State of California, which in Section 23 of Article XII, after defining the term "Corporation" in the exact language of Section 1 of Article XIV of the Arizona Constitution, provided:

> "Every private corporation and every INDIVIDUAL operating, managing or controlling the plant * * * for the production, generation, delivery or furnishing of * * * water or power * * * either directly or indirectly to or for the public * * * is hereby declared to be a public utility subject to such control and regulation by the railroad commission as may be provided by the Legislature, and every class of private corporations, INDIVIDUALS, or associations of individuals hereafter declared by the Legislature to be public utilities shall likewise be subject to such control and regulation * * * and the right of the Legislature to confer power upon the rail-

road commission of public utilities is hereby declared to be plenary and to be unlimited by any provision of this Constitution."

It is obvious that the framers of the Arizona Constitution advisedly phrased Sections 1 and 16 of Article XIV and Section 2 of Article XV, so as not to affect individuals, and that the governmental control vested in the Corporation Commission was, as indicated in Secs. 1 and 2 of Article XIV, based upon the general amenableness of corporations to control as a condition of the enjoyment by them of the "powers and privileges of corporations not possessed by individuals or partnerships," and to the "full visitorial and inquisitorial powers of the State" notwithstanding the immunities and privileges secured in the declaration of rights to persons (Article XIV, Sec. 16).

In the Court below the appellees relied upon some State cases holding that the term "railroad corporations" in State statutes imposing special liabilities or burdens upon railroad companies, should be construed to include individual owners of railroads in order to avoid the necessity of declaring such statutes unconstitutional; but this court has held that it is not necessary to the validity of such statutes that they should be construed to extend to individuals. Tullis vs. Lake Erie Western R. Co., 175 U. S., 348, 351, and cases cited.

In the Public Service Corporation Act, Chapter 90, supra, the first legislature provided, in Subdivision Z of Section 2, that the term "public service corporation," when used in that Chapter, should include every "water corporation," etc., "as these

terms are used in this Section, and each thereof is hereby declared to be a public service corporation and to be subject to the jurisdiction, control, and regulation of the Commission and the provisions of this chapter; and, in Subdivision X of the same Section, that the term "water corporation," when used in that chapter, should include every corporation or person, etc., owning, controlling, operating, or managing any water system for compensation.

It was contended by the appellees in the Court below, that the legislature thereby undertook to define the term "public service corporation" as used in the Constitution, and that such legislative construction is entitled to great weight and consideration. On the contrary, the inference is stronger that the legislature was attempting to extend the jurisdiction of the Commission to *persons* under assumed sanction of Section 6 of Article XV of the Constitution (see Appendix), as the appellees also contend.

The idea of definition excludes the idea of extension and *vice versa,* so that the appellees thus concede doubt as to which was the intent of the legislature and destroy their argument of legislative construction.

Needless to suggest, the Constitution controls and the legislature is without power to impair or change it by construction of terms. Legislative construction can be only an aid to interpretation and, even if intent to construe be clearly apparent, must be ignored if, as here, the language of the Constitution is plain.

The Court below, in its opinion, said (Record, p. 122):

> "It seems to us to be giving a very narrow and technical construction to the provisions of the Constitution and the statute to say that it would not include persons because such a definition is found in the statute but is absent from the Constitution. It would seem to render the Constitution ineffective and would to a great extent defeat the beneficial purposes of the statute and the practical ends which it is intended to accomplish."

This obviously begs the question.

The court further said (same page).

> "There would be no difficulty whatever in a corporation transferring its property to an individual and thus destroy the jurisdiction of the Corporation Commission. Such a construction would therefore result in defeating the statute entirely until the Constitution could be amended to conform to such a view."

This argument, raising the statute above the Constitution, also begs the question and, in any event, is destroyed by the Constitution, which guards against any such attempted evasion. Section 7 of Article XIV provides:

> "No corporation shall lease or alienate any franchise so as to relieve the franchise, or property held thereunder, from the liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise or of any of its privileges."

The Attempted Extension of the Jurisdiction of the Corporation Commission to Control Over Persons, Cannot be Supported Under Section 6 of Article XV of the Arizona Constitution.

Section 6 of Article XV provides:

> "The lawmaking power may enlarge the powers and extend the duties of the corporation commission, * * *."

The argument of the appellees on this point necessarily concedes that the Constitution does not confer upon the Commission jurisdiction over persons, and resolves into the proposition that the framers of the Constitution, after defining and limiting the jurisdiction of the Commission to control over public service corporations (including associations and joint-stock companies having any powers or privileges of corporations *not possessed by individuals or co-partnerships*), then proceeded, by empowering the legislature to enlarge the powers and extend the duties of the Commission, to destroy that limit upon jurisdiction and give the legislature *carte blanche* in respect of the Commission.

The argument, carried to its logical conclusion, would result in vesting the legislature with authority to confer upon the Corporation Commission all executive and judicial functions not by the Constitution expressly conferred upon other specified governmental agencies. That being untenable, it becomes obvious that the grant of legislative power in Section 6 of Article XV must have rational bounds.

In the first place it must be construed so as not to collide with the express limitation of objects of jurisdiction and, in the second place, "powers" and "duties," as there used, obviously intend powers of control over, and duties in respect of, the specified objects of jurisdiction.

"Generally speaking," as said by Justice Thompson in Kendall vs. U. S., 12 Pet. 524, 622, "the word 'power' is used in reference to the means employed in carrying jurisdiction into execution;" and by Chief Justice Taney (p. 636), in speaking of the Acts of Congress establishing the judicial system of the United States, "the word 'powers' is employed to denote the process, the means, the modes of proceeding, which the courts are authorized to use in exercising their jurisdiction in the cases specially enumerated in the law as committed to their 'cognizance;' " and by Justice Barbour (p. 649):

> "It is thus apparent that Congress used the terms "jurisdiction," and 'powers,' as being of different import. The sections giving jurisdiction describe the subject matter, and the parties of which the courts may take cognizance; the sections giving powers, import authority to issue certain writs, and do certain acts incidentally becoming necessary in, and being auxiliary to, the exercise of their jurisdiction."

It is submitted, therefore, that Section 6 of Article XV cannot be construed to empower the legislature to extend the jurisdiction of the corporation commission to control over persons, but is merely a proper provision enabling the legislature to sup-

ply any incidental powers which, through the necessarily general nature of constitutional provisions, may not have been included in the other Sections of Article XV.

It is also to be remembered that the framers of the Arizona Constitution had before them the California Constitution which, as noticed, *supra,* specifically gave the California Railroad Commission jurisdiction over individuals operating public utilities.

But if Section 6 of Article XV could be construed to authorize the legislature to extend the jurisdiction of the Corporation Commission to persons,

The Public Service Corporation Act, so Far as it Undertakes to Extend the Jurisdiction of the Corporation Commission to Persons, is Violative of Section 13 of Part 2 of Article IV of the Arizona Constitution, in That the Subject of Control Over Individuals is not Expressed in the Title of That Act.

Section 13 of Part 2 of Article IV, of the Constitution of Arizona, provides:

> "Every Act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an Act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be embraced in the title."

The title of the Public Service Corporation Act is

> "AN ACT relating to Public Service Corporations, Providing for the Regulation of the same, Fixing Penalties for the Violation Thereof, and Repealing Certain Acts; With an Emergency Clause."

The argument of the appellees in the Court below, necessarily conceding that the term "public service corporations," as used in the Constitution, did not embrace persons, was that, as the Act, in Subdivisions X and Z of Section 2, defined the term "public service corporations," as used in the Act, to include persons, such definition attached to the same term in the title, and that, therefore, the title did in fact express the subject of extending the jurisdiction of the Commission to persons. As such process (and result) would render nugatory any such constitutional provision, it may be dismissed without further notice.

The Court below, in its opinion, after saying that its ruling that the term "public service corporations," as used in the Constitution and in the statute, embraced persons, might be deemed a sufficient answer to the plaintiff's contention, merely asked the question "Does it (the Act) embrace more than 'one subject and matters properly connected therewith'?" and answered "We think not," citing authorities to the point that a constitutional requirement such as Section 13 of Part 2, Article IV, *supra*, should be construed liberally, and concluded:

> "While it is true that this Act contains a great number of detailed provisions, still we think that they are all germane to its general

> purpose, and that the manifest intent of the legislature and the construction of the words of the Act are in favor of the law; that the title of the Act embraces 'but one subject and matters properly connected therewith.'" (Record, p. 124.)

Apparently the Court below confused the question of the meaning of the term "public service corporation" in the Constitution with the question of whether or not the title of the Act violated Section 13 of Part 2 of Article IV of the Constitution, and failed to appreciate that the latter question arises only in case the term "public service corporations," as used in the Constitution, is held not to include individuals.

The question necessarily assumes that the Act of the legislature is attempted extension of the jurisdiction of the Commission to persons, and the point is whether the title, expressing as the subject the regulation of public service corporations, can reasonably be said to indicate that one of the purposes of the Act was such extension of jurisdiction.

As the framers of the Constitution did not see fit to give the corporation commission jurisdiction over persons, the members of the legislature and the publics generally who might be interested, could not from the title of the Act in question and through impression of that language upon the intellect, cognize that the proposed act, purporting to provide for the regulation of corporations, would go further and apply its provisions, and extend the jurisdiction of the Corporation Commission, to the control of persons.

In any event, as suggested before, the control of persons in the use of their individual property is such a radical invasion of individual rights as not to be regarded as reasonably connected with regulation of corporations as a condition of enjoyment of "powers and privileges of corporations not possessed by individuals or co-partnerships."

To use the language of Justice Harlan, in Inhabitants of Montclair vs. Ramsdell, 107 U. S. (17 Otto), 147, there are here grave objections and the conflict between the statute and the constitution is palpable.

Schenck vs. State (N. J.), 37 Atl., 724, is directly in point. There it was held that the title "An Act to provide for the regulation and incorporation of insurance companies," did not express as a subject of the legislation, the regulation of the business of *individual insurers.*

Golden Star Fraternity vs. Martin (N. J.), 35 Atl., 908, is also in point. There, an act entitled "An Act to incorporate benevolent and charitable institutions," was held invalid so far as it authorized contracts of ordinary life insurance to be made by such associations, as that subject was not expressed in the title.

See also In re Mansfield, 22 Penna. Superior Court, 224, where an act entitled "An Act to regulate the treatment and control of dependent, neglected and delinquent children under the age of sixteen years," which extended its provisions to children not included in such classification, was held invalid because the title contained no intimation that it was the purpose to deal with the treatment and control of all children.

Also Bohmer vs. Haffner (N. Y.), 55 N. E., 1047, where a section of an act applying to railroads was held violative of the Constitution because the subject of that section was not within the title of the act.

We submit that, for the reasons stated, the Corporation Commission was without jurisdiction over the defendant Ida A. Van Dyke, individual owner of the water system in question.

The further and underlying question is presented whether Mrs. Van Dyke's water business is of such private and non-public nature as that attempted governmental rate fixing, even if sanctioned by the State Constitution, would be violative of the Federal Constitution. Consideration of this question will be deferred until after the discussion under the following head, wherein it is more convenient to develop the facts.

But, even if it could be held that the Corporation Commission had jurisdiction in the premises, its proceedings and order are confiscatory and violative of the Federal Constitution, in that, in its valuation of the water system, it failed to make allowance for substantial items.

The Action of the Corporation Commission Was Confiscatory in That the Value of the Water Right, the Value of the Water, the Value of the Land Forming the Sand Basin and Immediate Water Shed, the value of the Strips of Land Occupied by the Pipe Lines or the Use of Such Strips for the Purpose, or the Value of Other Substantial Items, Was Not Allowed in the Valuation of the System.

If Mrs. Van Dyke, in obtaining and distributing water, is utilizing, as part of the water system, a valid water right by appropriation, which is property and has substantial value, and which has been omitted in the valuation of the water system, the order of the Commission is confiscatory. San Joaquin & K. R. C. & I. Company vs. Stanislaus County, 233 U. S., 459.

The same result follows if she is held not to have a valid water right by appropriation, for percolating and diffused underground water constituting a water supply is recognized as an element of value in the land itself (Howard vs. Perrin, 76 Pac., 400, 462; 200 U. S., 71, 75), which must be included in valuation of the plant for rate-making purposes. In re San Gabriel Valley Water Co. (Public Utilities Reports, 1916 B, 895, 906-911) quoting (pp. 910, 911) from opinion of Morrow, J., in Water Co. of Tonopah vs. Public Service Commission, August 13, 1913, as follows:

> "The water which it (the company) claims as a water right is percolating water running through its lands. I do not understand that

> percolating water passing under or through the soil is anywhere recognized as a water right, having a valuation separate and distinct from the land. It is not in any sense surface water. It is not water appropriated from running streams; nor is it water, the right to which is the same as that of a riparian owner. Percolating water is part and parcel of the soil, and it is as much a constituent element of the land as the mineral therein contained. Its value, if it has any, is therefore in the land, and cannot be separated from the land. It follows that in this case the value which the water has must be in the land. It may be that the complainant's development of water upon this land has given it a largely increased value, but if that is so, it appears to me that that should be the valuation of the land with its water content as a whole, and not as land with water right attached. This may not make a great diference in the result; but it will enable the Commission and the court to make a comparison with other land of like character and similarly situated."

In concluding, Judge Morrow says:

> "It seems to me that it would be difficult to establish an absolutely independent water value aside from the value of the land; but the value of the water with the land may be ascertained in the view of its available uses."

The difference in result is that, if Mrs. Van Dyke has a valid water right, she is entitled to divert and use the water, to the extent of her appropriation, without interference from the owners of other lands in or along the gulch in which the water flows and

accumulates in the sand basin tapped by the wells; if she has no water right, she takes the water as an incident of her ownership of the realty and, in respect of the amount of water pumped, might be subject to control by the courts at the suit of owners of other lands, if any, who might sink wells on their own land and complain that she was injuring them by exhausting the supply (2 Wiel, Water Rights in the Western States, 3d Ed., Sections 1039-1066) or by proper legislation sanctioned by the same principle (Lindsley vs. Natural Carbonic Gas Co., 220 U. S., 60).

The facts as set forth in the affidavits on behalf of the plaintiffs are as follows:

Affidavit of Cleve W. Van Dyke (*R., p.* 57):

> That I am familiar with the lands used and useful in connection with the said water system owned and operated by the said I. A. Van Dyke and forming a part thereof. That about two hundred and forty acres of land, a large portion of which forms a storage basin for water which flows from the mountains adjacent to Miami, together with the mountain slopes therefrom are used and useful and absolutely necessary as a part of said water system. That the said land is of great value, to-wit: about the sum of $38,400.00 and that the same was not considered by the Arizona Corporation Commission as a part of the water system of the said I. A. Van Dyke, and the value thereof was not considered or included by the said Arizona Corporation Commission as a part of the said water system

of the said I. A. Van Dyke and the value thereof was not considered or included by the said Arizona Corporation Commission in estimating the value of the said water system for the purpose of fixing the rates for the sale and distribution of water by the said I. A. Van Dyke, which said rates are set forth in Exhibit "C" attached to complainant's complaint herein.

That the said I. A. Van Dyke is the owner of a water right near the town of Miami, Gila County, Arizona, of the value of about $20,000, used and useful in connection with said water system and that the said water right and the value thereof was not considered or included by said commission as a part of said water system for the purpose of fixing rates prescribed by its order on the 1st day of May, 1914.

Affidavit of R. G. Thomas (*R., pp.* 59, 60, 61, 62):

That the land adjacent to said Miami Townsite, used and useful in connection with said I. A. Van Dyke water system and owned by the said I. A. Van Dyke, consists of 189.7 acres all lying in one body, and comprising a water basin for the collection and storage of water used by the I. A. Van Dyke water system, containing 60 acres in said basin and 129.7 acres of which land is used and useful in connection with said I. A. Van Dyke water system and owned by her, comprises a water shed, which water shed surrounds said water basin, beginning from level ground, rising back and constituting the said water shed; the water flows from this water shed into the water basin; the bottom of the basin is filled with sand; the water settles in this sand and

is held and stored there, which constitutes the water supply of I. A. Van Dyke water system.

* * * * * *

That a large portion of the land above mentioned comprising said water basin and said water shed is desirable land for residence purposes, and unless said land was owned and controlled by I. A. Van Dyke, the same would be settled upon by other parties, and residences would be erected thereon, and the same would be occupied by tenants, and the offal, refuse and excrement necessarily resulting from such occupancy and residence would be deposited upon said land and would contaminate the water flowing into said basin and used and distributed by the said I. A. Van Dyke through said water system; that in order to prevent the use of said land for such residence purposes, it is absolutely necessary that the land be owned and controlled by the said I. A. Van Dyke, and used by her in connection with said water system; that efforts have been made since said I. A. Van Dyke acquired said property, to establish a dumping ground for garbage and a cemetery thereon, and it was only by reason of the ownership and control of said land by the said I. A. Van Dyke and its use by her in connection with said water system that she was enabled to prevent the establishment of said garbage dump and cemetery thereon; that said Miami Townsite, and the territory adjacent thereto is situated and located in the heart of a desert country; that water is hard to find and difficult to develop,—a great deal of the water that is developed is not potable and unfit for drinking purposes. Some of the water, because of its coming in contact with minerals, is impregnated with minerals and some of it contains

a high percentage of sulphuric acid; that that portion of the property owned by I. A. Van Dyke, which constitutes the water basin and the water shed, produces a quantity of wholesome, potable water suitable for domestic uses; that said basin is the only water basin contiguous to the Miami Townsite where a sufficient quantity of potable water can be secured for domestic purposes in Miami Townsite; that because of this fact, its ownership and control is a necessary portion of the water system; that the land comprising said water basin and upon which said wells are situated, is of the value of $57,000.00; that the land comprising said water shed is of the value of $16,720.00, making a total valuation of $73,720.00.

* * * * * *

That I am familiar with a certain water right that is owned by I. A. Van Dyke; that I. A. Van Dyke has appropriated and claims perpetually 30,000 miners' inches, both surface and subterranean, and any and all other waters which flow over said water shed and into said water basin owned by I. A. Van Dyke, and all of the water of the streams and creeks which flow from the headwaters of the Pinal Mountains and all the tributaries and affluents of said streams; that said streams are supplied from live springs, melting snows and rains in the Pinal Mountains and on the water shed and constitute the supply of water that flows into the water basin; that the purpose and intention of appropriating said waters was to supply the consumers of the Miami Townsite with water; that the water basin receives its supply of water through the waters appropriated by I. A Van Dyke in this water right; that because of the desert

country, the scarcity of water and the difficulty of securing potable water in this country, it is necessary in order to maintain an adequate supply of water, that I. A. Van Dyke own this water right, the demand in this district for water being so great that if the ownership were vested in other persons, that it undoubtedly would be pumped and utilized in other ways; that there is a great demand for water in this district for the concentrating of low grade copper ores, there being one mill of 3,000 tons daily capacity, and one of 10,000 tons daily capacity in course of construction, which must be supplied with water for the concentration of ores. For this reason the territory within a reasonable distance from this district, which is water bearing, has been purchased and is owned by interests that need a supply of water in their business. This is one of the reasons why the ownership of the water basin, the water shed and the water rights are essential to the maintenance and continuance of the I. A. Van Dyke water system which supplies the residents of Miami Townsite with water. The value of said water right owned by I. A. Van Dyke is $20,000.00.

Affidavit of L. F. Fletcher (*R., pp.* 63, 64):

* * * that the land adjacent to Miami Townsite, used and useful in connection with said I. A. Van Dyke water system and owned by said I. A. Van Dyke, consists of 189.7 acres, all lying in one body, 60 acres of which comprises the water basin for the storage of water, and 129.7 acres of which land comprises a water shed surrounding said water basin; that a large portion of the land com-

prising said water shed and water basin is desirable land for residence purposes, and unless said land was owned and controlled by I. A. Van Dyke, the same would be settled upon by other parties and residences would be erected thereon and the same would be occupied by tenants and the offal, refuse and excrement necessarily resulting from said occupancy and residence, would be deposited upon said land and would contaminate the water flowing therefrom and into said basin and used and distributed by said I. A. Van Dyke through said water system; that in order to prevent the use of said land for such residence purposes it is absolutely necessary that said land be owned and controlled by the said I. A. Van Dyke, and used by her in connection with said system; that efforts have recently been made to establish a dumping ground for garbage and a cemetery thereon, and by reason of the ownership and control of said land by said I. A. Van Dyke, and its use by her in connection with said water system, she was enabled to and did prevent the establishment of said garbage dump and cemetery thereon; that the land comprising said water basin is of the value of $57,000.00; that the land comprising said water shed is of the value of $16,720.00, making the total value of $73,720.00; that I arrived at my estimate of said valuation and base the same upon the sale of real estate of the same or similar character in the vicinity of said land;

* * * * * *

That I am familiar with a certain water right owned by I. A. Van Dyke; that I. A. Van Dyke has appropriated and claims perpetually 30,000 miners' inches, both surface and subterranean, and any and all other waters

which flow over said water shed and into said water basin owned by I. A. Van Dyke, and all of the water of the streams and creeks which flow from the headwaters of the Pinal Mountains and all the tributaries and affluents of said streams; that said streams are supplied from live springs; melting snows and rains in the Pinal Mountains and on the water shed, and constitute the supply of water that flows into the water basin; that the ownership of said water right by said I. A. Van Dyke is absolutely necessary in connection with said water system in order to maintain an adequate supply of water therefor, and that without said water right the said I. A. Van Dyke could not control and acquire the water used in and through said system.

That the value of said water right is the sum of $20,000.00.

Affidavit of I. A. Van Dyke and Cleve W. Van Dyke (*R., pp.* 66-68):

* * * that in the year 1909 I caused to be organized the Miami Townsite Company, a corporation, which corporation was organized under the laws of Arizona, and said Miami Townsite Company acquired a tract of land for the purpose of establishing a town thereon; that said Miami Townsite Company caused said tract of land to be surveyed into lots, blocks, streets and alleys, and established a townsite business; that said land so acquired by said Miami Townsite Company is the same land upon which is now situated the Miami Townsite in Gila County, State of Arizona; that said land is situated in the heart of a desert country, and that in order to promote and develop a town thereon, it was

essential to have a water supply, and that in order to facilitate the establishment of said town, and to sell and dispose of lots and land therein and develop a town thereon, it became necessary to establish a water system to be operated in connection with said townsite business, and in furtherance thereof I. A. Van Dyke acquired a tract of land comprising 189.7 acres, of which said tract of land 129.7 acres constitutes a water shed and 60 acres of which constitutes a water basin. From this water basin a supply of water was secured through three wells which were constructed thereon. The said I. A. Van Dyke established a pumping plant, connected said wells with mains laid through and upon said lands, connected said mains with laterals, which in turn are connected with the property owned by purchasers of lots of land in said Miami Townsite, and thereby established the water system known as the I. A. Van Dyke water system, and since the acquirement thereof I. A. Van Dyke has been and now is operating said water system in connection with said townsite business and supplying the residents and inhabitants of said townsite with water; that said water system was established and has been operated and is now being operated solely and exclusively for the purpose of supplying the residents and inhabitants of said Miami Townsite with water, and not for the purpose of supplying persons outside of said townsite, or the public generally with water; that at all times since the establishment of said water system I. A. Van Dyke has refused to supply persons residing outside of the said Miami Townsite with water, except in two instances, as follows: On one occasion when the said I. A. Van Dyke purchased an addi-

tional piece of ground to be used as an addition to said Miami Townside from one John H. Davis, and as an inducement to the said John H. Davis to transfer said tract of land to I. A. Van Dyke, it was agreed that he should be supplied, and he has been supplied since said time, with water from said water system. A second instance is in the case of one J. P. Glass, who purchased real estate from the Miami Townsite Company, and in order to square up the piece of property that he purchased from the Miami Townsite Company, he purchased a portion of the Davis Tract from the said John H. Davis at about the same time that I. A. Van Dyke purchased a portion of the same tract from the said John H. Davis, and the water that Mr. Glass was securing on the Miami Townsite was extended by him for his use to the fractional piece of ground that was purchased by him from the said John H. Davis; that it was never intended that the water system thus established should be used to supply the general public outside of Miami Townsite with water, and it has always been stated by I. A. Van Dyke and has been understood in the community where the I. A. Van Dyke water system has been established and is in operation, that at no time would the I. A. Van Dyke water system supply water to others than those who are residing upon the Miami Townsite, and that as stated before herein, I. A. Van Dyke has expressly refused on many occasions to supply water to other townsite projects in the vicinity of the Miami Townsite; * * * that the land used and useful in connection with said water system, including strips of land in and upon which the main and lateral pipes are laid, is owned in fee simple by I. A. Van Dyke.

Affidavit of Cleve W. Van Dyke (*R., pp.* 68-69, 71):

> * * * that I am manager of the I. A. Van Dyke water system; that I have had charge of the organization, construction and operation of said system from its inception; that I have had nine years' experience in the construction and operation of water systems in Arizona. * * * In the Missippi Valley, on both the Eastern and Western coasts water is so plentiful that generally all that is needed is an equipment to pump the same from some river, stream or underground flow. Where conditions of this nature exist, the only essentials necessary to a water system is an equipment used in distributing the water, and for the pumping and storage of the same. In Arizona, however, outside of the agricultural valleys, a water distribution system is a vastly different problem. There the first and greatest expense incurred in the establishment of a water system in such localities as Miami, is securing an adequate supply of good wholesome water. In fact, no business man of sufficient business ability to organize, develop and conduct a water system successfully would consider a water enterprise involving a considerable amount of investment, without first arranging for a definite supply of water. This phase is usually found to be the most expense phase of water systems in the mountain towns of desert Arizona. One other phase that the experience of water distributors have found to be essential in mountain communities, is to care for the quality and kind of water to be provided their consumers. The necessity of securing and main-

taining a sanitary supply of wholesome water is primary.

* * * * * *

* * * that the said Engineer Ben Ferguson was supplied with a map showing the pipe line system and another map showing the water basin and water shed; that the methods of securing water were explained to him in detail; that the necessity of the ownership of the water basin and the water shed were explained to him in detail; that it was explained to Mr. Ferguson that it was necessary to own the water shed and water basin in order to furnish an adequate supply of water to the I. A. Van Dyke water system, that its ownership was further necessary in order to keep it sanitary so that the waters flowing into the wells of the I. A. Van Dyke water system would be uncontaminated. An effort was made to provide Mr. Ferguson with a valuation of the rights of way and the water basin and water shed, so that he might report these values to the Commission, but Mr. Ferguson refused to consider or accept such valuations, although they are a part of the water system used, useful and necessary in maintaining said water system.

Affidavit of T. J. Corcoran (*R., pp.* 72-74, 74-75):

* * * that the I. A. Van Dyke water system is located in the Miami Townsite, and is operated for the sole purpose of supplying water to the residents of the Miami Townsite; that the supply of water for the I. A. Van Dyke water system is drawn from four wells located in the water basin, sixty acres in extent; that this water basin is surrounded by a water shed containing 129.7 acres, which

constitutes the water shed; that the water basin and water shed are owned by I. A. Van Dyke, and is used, useful and necessary to secure water for the I. A. Van Dyke water system; that it is necessary that I. A. Van Dyke own and control said water basin and water shed in order to be able to keep said water supply sanitary and potable; that I. A. Van Dyke owns in connection with said water shed and water basin a water right, a stream of 30,000 miners' inches of water both surface and subterranean, which flows from streams and creeks into said water basin together with all the tributaries of said streams and that said water right was located for the purpose and with the intention of developing and securing said water for consumers in the Miami Townsite; that the waters which supply the streams, creeks and tributaries to the water basin originate from live streams, melting snows and rains in the Pinal Mountains and upon the water shed; that these waters are conducted to the water basin; that this water basin is filled with sand and that the waters are retained and stored in said sand; that the wells of the I. A. Van Dyke water system have been dug in the water basin; that by virtue of the fact that the waters supplying the water system of Ida A. Van Dyke is surface water; that it is positively essential and necessary that the water basin and the water shed be kept in a sanitary condition to keep the waters uncontaminated; that during the wet season the waters rise to the surface of the water basin and as the season advances and the drought begins, the waters sink in the basin, making it necessary to run drifts into the lowest portions of the basin, in order to secure sufficient water

for the season's supply; that Miami is located in a desert country where water is very scarce and very hard to secure and expensive to get; that in order to protect the water supply of the I. A. Van Dyke water system, the ownership of this basin is necessary to the system; that in the Miami mining district adjacent to the Miami Townsite are several large low-grade copper mines; that the ore is taken from the mines, crushed and concentrated by wet process; large quantities of water are necessary in these mills; that one mill has a capacity of 3,000 tons per day; and another mill, in course of construction, will have a capacity of 10,000 tons per day; that in order to secure sufficient water to maintain this work it is necessary to pump water into the district several miles; that water is so scarce in this district that one company secures its supply of water from the Old Dominion mine seven miles away, which is pumped to the concentrator; that the demand for water is so great in this desert community that in order to be secure in the water supply for the I. A. Van Dyke system it is necessary to own and control the water basin and water shed; that the Inspiration Consolidated Mining Company in order to protect their enterprise, at a large expenditure of money, has purchased several hundred acres of ground several miles distant from their plant; that they have gone 13 miles below their plant to locate a water right on the Pinal creek and have spent large sums in order to protect themselves; that the demand in this desert country for water ground is great and such ground is valuable; for the same sane business reasons we have copied the large mining indus-

tries of this district to protect the water supply of the I. A. Van Dyke water system in order to secure a sufficient water supply for the Miami Townsite; the I. A. Van Dyke water system was used for the purpose of supplying water to the residents of the Miami Townsite, the Miami Townsite Company having been organized by Ida A. Van Dyke, C. W. Van Dyke and L. D. Van Dyke; ever since its establishment, the I. A. Van Dyke system has followed the policy of furnishing water exclusively to the Miami Townsite; it has refused to supply applicants outside of the Miami Townsite; in Davis Canyon, on ground owned by the Orphan Copper Company, and on the Prochaska Townsite are 200 families to whom the I. A. Van Dyke water system has refused to extend its mains to supply its people, inasmuch as the water that they have located and developed is inadequate to supply more than the needs of the Miami Townsite; at all times during the conduct of the I. A. Van Dyke water system its policy has been to supply the residents of the Miami Townsite and them only; all applicants living outside of said Miami Townsite have been refused connections, and it has been given out at all times that the I. A. Van Dyke water system was established merely for the purpose of supplying water to the residents of the Miami Townsite; the number of wells, the amount of water located, the amount of water basin and water shed purchased has at all times been based upon the principle that only such amounts would be secured as could be used and useful in the Miami Townsite; preparations beyond this have not been made; it is not now intended, nor has it ever been in-

tended by the I. A. Van Dyke water system to supply a greater area than is constituted by the Miami Townsite; * * *

* * * * * * *

* * * As superintendent of said plant one of my duties is to maintain a sanitary condition upon the water shed and water basin, and during the entire time a strict surveillance of this property has been made by myself and my employes to maintain a sanitary condition upon said water shed and water basin. In instances where I have been unable to control said sanitary situation I have reported same to Manager C. W. Van Dyke of said water system, and in several instances in order to control the sanitary situation it has become necessary for C. W. Van Dyke to complain to the local sanitary officers and to the board of health in order to insist upon sanitary measures, and in order to keep said water shed and water basin uncontaminated. Said board of health have co-operated with the I. A. Van Dyke water system with the result that said water shed and said water basin have been kept sanitary and the waters have been kept uncontaminated. At the time of said hearing several loads of fresh stable manure were hauled and dumped upon said water basin by some parties unknown to me, and not connected with the I. A. Van Dyke water system. As was my custom I reported this to Manager C. W. Van Dyke, who reported the same to the sanitary officer. Said manure did not remain sufficiently long to contaminate the waters, but as is usual in such cases was removed or burned. There are no corrals or stables upon the I. A. Van Dyke water basin or water shed, and since the ownership of I. A. Van Dyke all corrals, residents or other conditions which would re-

sult in an unsanitary condition of said water shed or water basin, or contaminate the said waters, have been removed. There is a stable in that vicinity in which is stabled one horse, but said stable is below the wells, and is upon ground owned by the Miami Townsite Company, and because of its being below the wells it cannot in any way contaminate the waters of the said water system.

Affidavit of L. D. Van Dyke (*R., pp.* 77-78, 79-81):

That I am familiar with the water basin and water shed and water right owned by I. A. Van Dyke, all of which is used, and is a necessary part of the system. The water, both surface and subterranean, for many miles in this district has been located and is appropriated for various uses. If I. A. Van Dyke had not located and appropriated the waters leading into the water shed and water basin, it would have been located by others; if located and appropriated by others, it could not have been used unless secured by purchase for the I. A. Van Dyke water system; that waters flowing into the water basin are surface waters. The water basin is filled with sand and during the wet seasons the water soaks into the sand and rises to the surface; as the season advances the water is pumped out through wells into the reservoirs of the I. A. Van Dyke water system. It is necessary that I. A. Van Dyke own said water basin and water shed in order to control its sanitary condition. There are six wagon loads of garbage hauled from the Miami Townsite daily. Because it is convenient to the town, the garbage dump would naturally be located in the water basin or upon the water shed.

Numerous efforts have been made in this direction, but they have been stopped by the officers and employes of the I. A. Van Dyke water system. It was through their efforts that the garbage dump was established a mile south of the town on a different water shed from the I. A. Van Dyke water shed, in order that no garbage should be dumped upon said water basin and water shed.

* * * * * *

That I have examined the opinion and order of the Corporation Commission made on the first day of May, 1914, which is supposed to be based upon the testimony taken at said hearing, and from the examination of said opinion and order I now state that said Corporation Commission did not allow any valuation for the well in the course of construction at the time of said investigation; that at said hearing in the cross examination of said witness, Mr. Ferguson, which appears on pages 28 to 35, inclusive, of said witness, Mr. Ferguson was interrogated and answered as follows, to-wit:

Q. As a matter of fact, don't you know that the acres of land now constituting what you have described as the water shed and which you say is necessary to be owned and maintained in connection with the water supply, is now being used for that purpose, for the accumulation of water to supply that well, is that true, Mr. Ferguson?

A. Those holdings constitute the drainage.

Q. And carries the supply for that well, as you have testified, is that not true?

A. No, because the water shed areas back of the water shed would certainly be a source of supply.

Q. Could this well be maintained without the source of supply which you have described as the water shed? When I say maintained I mean maintained so as to secure water in any useful amount?

A. Well, the drainage comes down that ravine, that draw where the holdings are situated.

Q. Answer the question please. Read the question.

* * * * * *

A. Well, the water is certainly taken through that property.

Q. And it is necessary for the maintenance of the well, is it not? You have already answered me.

A. As I understand it, I have had it explained to me, the land mentioned does not extend to the ultimate source of supply, but that water certainly does drain through the land that you claim."

Q. Please read the question and answer it?

* * * * * *

A. Well, it is necessary for the maintenance of the water supply.

Q. And it is now being used in connection with the water supply?

A. To that extent.

Q. Is it owned by Mrs. Van Dyke?

A. I don't know of my own knowledge.

Q. Didn't you ask?

A. I asked, yes, but I haven't seen the deeds or anything of that sort.

Q. Now then, based upon your statement that this water shed is necessary to be used and is used in connection with the maintenance of the water supply in the well, would you not say that the acreage embraced in that

water shed is of some value to the water system and should be included in your valuation?

* * * * * *

A. In that respect it would have a value to the water company.

Q. Why didn't you estimate the value then?

* * * * * *

A. I didn't estimate the value of the real estate.

Q. You said that five acres were necessary, why didn't you include more than five acres, why didn't you include that portion of the water shed which you now say is necessary to be used and is used in connection with the water system maintained for the supplying of the Town of Miami with water?

* * * * * *

A. Because in my opinion the five acres were necessary for the well and the tank sites and works and I didn't attempt to include the rest of the real estate or make any suggestion either that it was or was not to be included.

Q. Mr. Bullard asked you, suggested to you that you were not a real estate man and could not place a valuation on this land, you did value the five acres.

A. I did not.

* * * * * *

Q. You do think, Mr. Ferguson, that the five acres has some value?

A. Yes.

Mr. Jacobs: The water shed real estate?

A. It would have an element of value to the water company.

Q. And likewise the five acres which you have already mentioned, has a value?

A. Yes.

Q. This real estate included in that water shed has both a physical and intangible value to this water system, has it not, the physical value bieng in the value of the land and the intangible value being the value determined by reason of its connection with the water system and used by the water system, and so would have a physical and intangible value, would it not. It would certainly have an intangible value?

A. Yes, sir, it would.

Q. And it would have a physical value, the land itself?

A. Yes.

From these affidavits it appears that Mrs. Van Dyke has appropriated 30,000 miners' inches, both surface and subterranean, and any and all other waters which flow over the water shed and into said water basin owned by her, and all of the water of the streams and creeks which flow from the headwaters of the Pinal Mountains and all the tributaries and affluents of said streams, and that said streams are supplied from live springs, melting snows and rains in the Pinal Mountains and on the water shed, and constitute the supply of water that flows into and down the gulch and into the water basin; that the water basin is filled with sand in which the water is retained and stored; that during the wet season the water rises to the surface of the water basin (forming what was known as the Granite Springs, where the water appropriation was made) and as the season advances and the drought begins the waters sink in the basin, making it necessary to sink wells or run drifts into the lowest portions in order to secure sufficient water.

The witnesses for the plaintiff in their affidavits assert that the area of the water basin is 60 acres, surrounding which Mrs. Van Dyke owns 129.7 acres, constituting part of the natural water shed, which it is necessary to maintain and police in order to prevent contamination of the drainage into the sand basin. The measures taken by Mrs. Van Dyke to protect the sand basin and water shed are further set forth in the affidavits of Henry Nichols, Sanitary Officer for Miami Precinct (Record, p. 84), and G. C. Snyder and J. H. Lacy, members of the Board of Health for Miami Precinct (Record, pp. 82, 83).

The affidavits filed on behalf of the defendants concede the physical facts as set forth in the plaintiff's affidavits.

Affidavit of W. P. Geary (Record, pp. 93-94):

> At said hearing, the Complainants herein offered no testimony regarding the value of any water basin. The value now claimed is One Hundred and Sixty Dollars ($160) per acre for two hundred and forty acres. Land in the Salt River Valley, under the Roosevelt irrigation project, can be purchased for a less sum. At the hearing, Witness H. M. Brown said Fifty Dollars ($50) per acre would be a liberal appraisement; Witness Mackay deemed Seventy-Five Dollars ($75) per acre sufficient, and such estimates were for land in the gulch where the well is situated and not representing the value of the surrounding hillsides and mountains. These various lands, on the hillsides and in the gulch, have been filed on and are held as mineral claims, the same being unpatented. Witness Mackay operates a water plant of his

own, supplying a different section of Miami, and considers a tract 33 1/3x100 sufficient area for the protection of his well and for water purposes.

The City of Phoenix owns a water system, supplying a city of approximately twenty-five thousand (25,000) inhabitants and approximately four acres are deemed sufficient for the protection of the well and for water purposes.

In the case at bar, about five acres were fenced about the lower well. Irrespective of any claims now made for water shed, I deem this five-acre enclosure, and the value thereof, sufficient for the purposes of the Complainants herein in operating this particular well.

I personally visited the well and observed no effort, on the part of the Complainants herein, to protect the area outside the enclosure from contamination. In fact, within a short distance, estimated at about one hundred yards from the fence, and in the gulch, approximately ten loads of manure was spread upon the ground. Nearby, and on property owned by the Complainants herein, various cottages were situated. These cottages enjoyed no sewer connections and in lieu thereof holes were dug in the ground. All of this is on the alleged watershed.

At the upper, or Stephens well, no enclosure is made. This well is unprotected as far as any efforts of the Complainants are concerned and at the hearing it was testified, by witnesses on behalf of the Complainants herein, that this water shed, in fact, all water shed was "open range."

We allowed five acres for real estate at the Stephens well, of the value of Seventy-Five

Dollars ($75) per acre, that being the figure introduced in the evidence as fair value of the land. Between the upper and lower wells, Witness Mackay owns a mining claim that occupies a very considerable area of the gulch and he stated that to attempt to drill a well on the hillside would occasion an expense in excess of any possible value.

The land about the Van Dyke holdings is higher in altitude than the Van Dyke land. The evidence taken at the hearing disclosed that the source of water supply is beyond any Van Dyke holdings and that water reaches the wells, percolating beneath the surface, and would so continue to do whether the complainants herein owned the surrounding hills or not.

In my opinion, based upon a thorough investigation of all matters germane to the valuation of this plant, and after considering each item separately, a valuation of real estate in excess of that allowed by the Commission is absurd. The evidence at the hearing before the Commission shows that these various mining claims, claimed by the Van Dykes as watershed, are best suited for a chicken ranch and were formerly used as a goat ranch. Near the lower well, and situated in close proximity, is an old barn and corral, the same being occupied by animals, and the ground strewn with manure and refuse. This is situated on Van Dyke property.

* * * * * *

C. W. Van Dyke stated that the side of the gulch containing the manure, barn and corral, cottages, etc., wouldn't drain into the well and that the water on that side contained sulphuric acid percolating from, what I recollect to be Live Oak Gulch. Yet, it is toward

and in the direction of that side of the gulch he is extending a well and drift, for the purpose of collecting water, and asking, for a value thereon, which was not done at the hearing before this Commission.

Affidavit of Ben Ferguson (*R., pp.* 96-97):

The town of Miami is located back from the banks and in the hills along the lower end of a gulch which extends in a general north and south direction with its source in the Pinal Mountains. A large water shed in these mountains is drained directly and by tributary gulches into the sands of this large gulch, the water being submerged, and some fifty feet below the surface of the sand at the complainants' lower well. Portions of the water shed are variously owned by mining companies, individuals and the United States Government.

I find by scaling a map showing complainants' holdings as submitted by their engineer, Mr. R. G. Thomas, that said holdings occupy some 7,500 feet of the gulch, and banks thereof. The complainants, at the time of my last visit, December 12, 1913, furnished water to Miami from two wells, sunk to bed-rock in the sands of the gulch. The lower well, which had previously been the main source of water supply, had partially failed, and the water supply was maintained by connecting the system with a pump at the upper or Stephens well. The two wells together were adequate to meet the demands.

The continuity of the complainants' holdings in the gulch is broken by property owned by J. J. Mackay, said property extending into and along the gulch and back into the hills,

including a portion of the water shed. Because the complainants supply water exclusively from wells in a gulch draining a large area, and because they do not have exclusive ownership of said gulch and water shed, I made no allowance in my valuation for water rights; in fact, I find no claim on the part of the complainants in the record of the hearing before the Arizona Corporation Commission for allowance for water rights.

* * * * * *

There is no evidence to show that the complainants in this cause have made a reasonable effort to protect the water supply against contamination.

I observed heaps of manure a short distance above the enclosures of the lower well; also the carcass of a cow which had not been disturbed between the dates of my first two trips to Miami.

Affidavit of G. P. Bullard (*Record, pp.* 98, 99):

That at said hearing, complainants were requested to show to the Commission what use the foothills near Miami owned by complainants, and designated as the so-called water shed, had in relation to the water utility owned by complianants, but that complainants declined and refused to offer any testimony in that respect, or any testimony as to the value of said lands. That at said hearing two witnesses were examined as to the value of said lands, comprising the so-called water shed, and that one witness, H. M. Brown, a real estate agent in Miami, swore that $50.00 per acre would be a liberal appraisement of the market value for all purposes of said lands so held and owned by complainants. That at said hearing J. J. Mackey, a real estate owner in Miami, and a man experienced

in the values of real estate at Miami, and the owner of a water utility at Miami, testified that the washes and draws in the foothills composing the so-called water shed of complainants might be worth about $75.00 per acre for water purposes and that the remainder of said foothills had little or no value for water shed or other water purposes; that it did not appear in evidence before the Commission the extent of the acreage of said draws or washes in said foothills, but that Mr. Mackey estimated that the acreage of the draws and washes in the Van Dyke holdings, useful for water purposes did not exceed forty (40) acres. That no claim was made by complainants at said hearing before said Commission for any water right value, and the first knowledge that affiant had of any claim of such nature was upon the filing of complainants' bill of complaint herein.

* * * * * *

That it appeared at said hearing that the water distributed by complainants from their said water utility was solely pumped from wells sunk in a gulch near the town of Miami, and that the source and supply of water from said wells was diffused ground water and percolating water; it did not appear from the evidence in the hearings before said Commission that any of the water supplying said wells was derived from any stream or spring or was running water.

These affidavits, in so far as they purport to state the testimony of witnesses before the Commission, are hearsay.

It thus appears that the Commission allowed only

$750 as the value of real estate—five acres at the lower well and five acres at the upper or Stephens Well, which it regarded as sufficient for the mere *operation* of the wells,—and ignored any value for water right by appropriation, upon the assumption that the source of supply was diffused ground and percolating water and not from any stream or spring and not running water (affidavit of Bullard) and ignored the water itself as an element of value "because the complainants supply water exclusively from wells in a gulch draining a large area and because they do not have exclusive ownership of said gulch and watershed" (affidavit of Ferguson).

The Court below, in its opinion, disposed of the claim for allowance of the value of the water right, water basin and water shed, as follows (Record, pp. 117, 118):

> As above stated, it is complained that the Corporation Commission failed to include in the property of the said water system, or consider or allow, a large tract of land containing about 189 acres. It is true that the Commission did not allow anything for this property and their reasons therefor are stated in their opinion, as follows:
>
> "The contention of the Company that the hills forming the banks of the main stream and small tributary gulches should be included in the valuation on the ground that such hills divert water into the main channel is not considered by this Commission. No effort of the company could prevent water being so diverted and it seems that the snow banks of the Pinal Mountains or the clouds could attain the same elements of value. The

company offered no direct evidence as to the value of real estate and the testimony of witness Mackey appears not to have been controverted."

The Company alleges that this tract of land was of the value of more than $38,400.00. In the affidavits submitted by complainants the same is valued at $73,720.00. It will be observed from an examination of these affidavits, especially those of L. F. Fletcher and A. Reid, both of whom are dealers in real estate, and both of whom fixed the value at exactly the same figure, that they did not place a value upon this land for water purposes or show how or in what manner it was worth $73,720.00 when used in connection with said water system. They simply valued the land itself regardless of the use to which it had or might be put; in other words, they gave the total value of the land, and in arriving at that value they stated,

"I arrived at my estimate of said valuation and base the same upon the sale of real estate of the same or similar character in the vicinity of said land."

So far as the records show, this land might be underlaid with valuable mineral deposits or it might be valuable for residential or other purposes, and it seems absurd to ask that they be allowed to require the consumers of water in the townsite of Miami to pay a return upon the actual value of this land, independent of its value when used as a part of, or in connection with, said water system, and we do not find anything in the record which shows its value when so used, if it has ever been so used. It was stated in argument and not denied that the title to the land was acquired under the mineral laws of the United

States. Suppose the complainants had gone back to the top of the Pinal Mountains and acquired twice or thrice the area now owned by them, would it be contended that because these vast areas form a part of the water shed and the water finds it way ultimately into the complainants' wells that an allowance should be made for all such property? We think not, and believe that the Corporation Commission did not err when it refused to make an allowance for this property.

We are likewise of the opinion that the Commission properly disallowed the claim for $20,000.00 for a water right. The affidavits submitted do not give a definite description of the alleged water right, and on the evidence submitted we are not able to determine whether in fact the complainants have made a legal appropriation of either underground or flood waters.

But the affidavits do give a definite description of the water right, the affidavits of Corcoran, Thomas and Fletcher in particular, wherein it was averred:

> That I am familiar with a certain water right that is owned by I. A. Van Dyke; that I. A. Van Dyke has appropriated and claims perpetually 30,000 miners' inches, both surface and subterranean, and any and all other waters which flow over said water shed and into said water basin owned by I. A. Van Dyke, and all of the water of the streams and creeks which flow from the headwaters of the Pinal Mountains and all the tributaries and affluents of said streams; that said streams are supplied from live springs, melting snows and rains in the Pinal Mountains and on the water shed and constitute the supply of water that flows into the water basin. * * *

This must be presumed to embrace the language of the notice of appropriation and if there were any question as to compliance with the local law in respect of form, substance, posting, or recording, the defendants would have raised it. For the purposes of the application for preliminary injunction it was not necessary for the plaintiffs to present a certified copy of the notice of appropriation, any more than it would have been necessary to present an abstract of title if the item in question had been land.

But compliance with the local statute in respect of notice of appropriation, posting, recording, etc., operates only, by the doctrine of relation, to secure the right in advance of actual diversion or use. Appropriation is effected by completed actual diversion or use for a beneficial purpose, even though the local statute in respect of notice, etc., may not have been complied with. 1 Wiel Water Rights in the Western States, 3d Ed., Sections 364, 365.

The defense did not question the fact or act of appropriation or the physical facts set forth in the plaintiffs' affidavits, but, conceding that a large water shed in the Pinal Mountains is drained directly and by tributary gulches into the Van Dyke sand basin in the large gulch in question (report of Commission, Record, p. 28; affidavit of Ferguson, *supra*), took the position that the source and supply of water from the wells was, notwithstanding, to be classed as diffused ground and percolating water (affidavit of Bullard).

It appears, and is not controverted, that the water which accumulates in the said basin is the natural flow down the gulch. The appropriation made by Mrs Van Dyke was, and is, of this flow, whether surface or underground.

The water is in no sense percolating or diffused ground water, but water which flows on the surface in the gulch and its tributaries in defined channels in the upper portion of the water shed, and underground, still in a defined channel, when it reaches the lower part of the gulch and sinks into the sand basin. It appears that the wells reach the bed rock of the gulch, demonstrating that the sand merely occupies the bed of the gulch and that the water which flows into the sand basin is still confined in a defined channel, and, as also appears, in the wet season it rises to the surface, forming springs, the flow from which, if not diverted, would continue down the gulch.

The sand basin is merely a natural reservoir in the bed of the gulch or water course, and the situation is the same as if Mrs. Van Dyke, having appropriated the flow of water in the gulch and its tributaries, had built an artificial reservoir to store and conserve the water during the dry seasons.

That water under such conditions is properly subject to appropriation and that Mrs. Van Dyke by actual use has acquired a valid water right, are fully sustained by the authorities.

Underground flow is subject to appropriation in Arizona.

Howard vs. Perrin, *supra.*

Water saturating the sand and gravel constituting the bed of the channels and sources of streams is as much a part of such streams as the surface flow.

2 Wiel, Water Rights in the Western States, 3d Ed., Sections 1077, et seq.

This was recognized by this court in Kansas vs. Colorado, 206 U. S., 46, 144.

> "No question of percolating water is involved, because the waters passing through the sand and gravel constituting the bed of a stream, and the lands so nearly adjacent that the only and natural outlet would be through such channel, are not percolating waters, as ordinarily defined by the common law, but, as already stated, are a part of the waters of the stream." Buckner Irr. M. & I. Co. vs. Farmers Ind. D. Co. (Colorado), 72 Pac., 49, 52.

The rules of evidence applicable are stated in Ryan vs. Quinlan (Mont.), 124 Pac., 512, 516:

> "Subsurface water flowing in defined channels reasonably ascertainable is subject to the same rules as water flowing in surface streams; but there is no presumption that any subsurface water, in whatever form it may be found, is tributary to any stream. City of Los Angeles vs. Pomeroy and Metcalf vs. Nelson, supra. The burden is upon him who asserts this to be a fact. We think that it may be established by circumstantial evidence, as was done in Strait vs. Brown and Forbell vs. City of New York, supra; but the evidence must have so much of substance and probative value as will reasonably exclude the contrary hypothesis. This court recognized this rule in Leonard vs. Shatzer, 11 Mont., 422, 28 Pac., 457, and in Hilger vs. Sieben, 38 Mont., 93, 98 Pac., 881."

We submit that the showing in the affidavits was amply sufficient to establish, for the purposes of the

application for injunction *pendente lite*, that Mrs. Van Dyke is utilizing as part of the water system a valid water right by appropriation, of substantial value, for which no allowance was made by the Commission in its valuation of the plant.

The showing on this point is so convincing that it seems unnecessary to consider the reciprocal point that if Mrs. Van Dyke has not a valid water right by appropriation, but is utilizing only diffused ground and percolating water, the action of the Commission is equally confiscatory in not allowing for the value of the water itself as property or as an element in the value of the land comprising the water basin. In re San Gabriel Valley Water Co., *supra*.

There is a dilemma here from which there is no escape. Either the value of the water or the value of the water right must be recognized.

We are, here, not concerned with the value to be placed upon the water right, or upon the water as an element in the value of the land, but merely with the fact that it is substantial and has been omitted. San Joaquin Company vs. Stanislaus County, supra.

The further question is presented whether the full area of the water basin, with or without the additional Van Dyke holdings constituting the greater portion of the immediate water shed, is, in view of the necessity of withholding it from other surface use and policing it, in order to prevent contamination of the water supply and insure potable water for use by the consumers, a proper element of the plant for which allowance must be made.

We submit that the showing in the plaintiff's affidavits of the necessity of maintaining and policing

the water basin and immediate water shed in order to insure potable water is not met by the defendant's affidavits.

It is obvious that if the water is not controlled by appropriation, but is merely diffused ground and percolating water, control of the whole water basin is necessary in order to insure control of sufficient water.

The Commission acted upon the theory that five acres at each well were reasonably necessary to the mere *operation* of the well and wholly ignored the element of necessity of control of the water or water basin area and protection against contamination.

According to the Commission's theory the water system is to be appraised as if Mrs. Van Dyke owned only five acres at each of the wells and all of the remainder of the water basin and the Van Dyke holdings on the sides of the gulch were owned by others. In such case, however, the other owners of land in the water basin would be in a position to enjoin Mrs. Van Dyke from pumping water in excess of the share of the common supply to which ten acres out of sixty, or whatever area might be involved, would be entitled (2 Wiel, Water Rights in the Western States, 3d Ed., Secs. 1041, et seq., 1100, et seq.), and control of the sand basin and immediate water shed for the purposes of maintenance and policing, necessary to insure potable water, would be gone.

Obviously, the whole of the sand basin and the other Van Dyke holdings constituting the greater portion of the immediate water shed, must be recognized as a necessary element of the water system and, whether the land itself or the use thereof for the pur-

poses of the water system be taken as the basis, the value thereof is substantial and has been ignored.

The value of the strips of land occupied by the pipe lines was also ignored.

These strips of land are owned in fee by Mrs. Van Dyke. See affidavit of I. A. and Cleve W. Van Dyke (Record, pp. 66, and 68).

They are described more at length in the affidavits of R. G. Thomas (Record, pp. 59, 60-61), and L. F. Fletcher (Record, pp. 63-64). We quote from the affidavit of Thomas:

> * * * that the land owned by I. A. Van Dyke and used and useful in connection with the said water system consists of various strips of land four feet in width through and upon which mains are laid and various strips of land two feet in width through and upon which the lateral pipes connected with said mains are laid, together with a few small strips of land reserved for future use in the laying of mains and lateral pipes, which land is situated within the Miami Townsite, additions thereto and land adjacent thereto owned by the said I. A. Van Dyke. * * *
>
> * * * that the strips of land through and upon which the main and lateral pipes of the said I. A. Van Dyke water system are laid in the Miami Townsite and adjacent thereto, and the strips of land reserved for future use in the laying of mains and lateral pipes, is of the value of $43,884.34. These values were secured by a very careful tabulation made as follows:
>
> The rights of way for the water mains are

four feet wide; the rights of way for the laterals are two feet wide. The value of the rights of way were determined upon the basis of the value of the abutting property, the amount of value of the abutting property being determined in all instances upon the basis of a valuation placed upon said property by the County Assessor for the year 1914; this method was used in all parts of the townsite with the exception of a proportionately small area in the western part of the Townsite. In this western portion the Assessor had failed to place a valuation upon this section in lots and blocks, but included the valuation of other property. Mr. L. F. Fletcher, a prominent real estate man of Miami, a man who is familiar with local values in the Townsite of Miami and surrounding country, was chosen to place a valuation based upon the assessed valuation of the lots and blocks in the Townsite, upon this portion of the town, and the value of the rights of way were secured in this portion of the townsite in that way. In securing the unit value, the number of square feet of the abutting property was determined and the assessed valuation placed thereon by the Assessor was determined by the number of square feet area. This unit value was then used as a factor in finding the value of the abutting right of way by multiplying the number of square feet in the abutting right of way by the unit value; the areas of the lots and the areas of the rights of way were determined by my own calculations; the values of the property were determined by the County Assessor and L. F. Fletcher.

The affidavits on behalf of the defendants were silent regarding these strips of land.

The court below, in its opinion, disposing of the claim for allowance of the value of these strips, said (Record, p. 118):

> "It is next claimed that complainants are entitled to an allowance of $43,884.34 on certain strips of land in Miami from two to four feet wide through and upon which the water mains and lateral pipes of the system are laid, and other strips of like width so located and reserved for future use in the laying of pipes. These strips seem to have been acquired by Ida A. Van Dyke by purchase from the Townsite Company. Pretermitting any consideration of the right of that company to thus dispose of any part of the streets in Miami, it is certainly true that these strips should be of value, so far as this case is concerned only as a means of extending the pipes. It could have no value as residence or business property, for it was in the streets, and subject to the servitude of public passage, and no structure could be placed on it which would interfere with the right of the public. We think the Corporation Commission committed no error in rejecting such claim,"

and then went on to criticise the method by which the plaintiffs' witnesses arrived at the valuation of $43,884.34.

As noted, the court below entertained the assumption that these strips of land were obtained by purchase from the Townsite Company, but there is nothing supporting that assumption. The inference, if

any, from the language of the affidavits of Thomas and Fletcher, is that the strips were reserved in the conveyance to the Townsite Company. However that may be, the defendants did not question the fact of ownership in fee.

The court below expressly recognized that these strips were of value as a means of extending the pipes, evidently meaning as rights of way for existing pipes as well as for future extensions, but sustained the Commission in omitting any allowance therefor.

It is obvious, however, that they are an integral and necessary element of the water system and that the land itself, or the use of it, has substantial value, and being ignored, the action of the Commission is confiscatory. San Joaquin Water Company vs. Stanislaus County, *supra.*

There are some other items (spur track, unfinished well, pumping engine, etc.), ignored by the Commission in whole or in part, and dismissed by the court below as being too small to produce any material effect (Record, p. 119).

The spur track is a small item, but the unfinished well and the pumping engine are relatively large.

As to the pumping engine, value claimed $3,784.06, see affidavits of Cleve W. Van Dyke (Record, pp. 70, 71), T. J. Corcoran (Record, p. 74), L. D. Van Dyke (Record, pp. 76, 77).

And as to the unfinished well, value claimed $2,265.71, see affidavits of Cleve W. Van Dyke (Record, p. 57), R. G. Thomas (Record, p. 59), Cleve W. Van Dyke (Record, pp. 69, 70), L. D. Van Dyke (Record, p. 77).

Mrs. Van Dyke's Water Business is of Such Private and Non-Public Nature as That Attempted Governmental Rate Fixing, Even if Sanctioned by the State Constitution, Would be Violative of the Federal Constitution.

In German Alliance Ins. Co. vs. Lewis, 233 U. S., 389, this court merged all previous distinctions and sanctions for governmental control, into the comprehensive formula "so far affected with a public interest" as to justify regulation of rates, explaining, however, per McKenna, J. (pp. 406-7):

> "We may put aside, therefore, all merely adventitious considerations and come to the bare and essential one, whether a contract of fire insurance is private, and as such has constitutional immunity from regulation. Or, to state it differently and to express an antithetical proposition, is the business of insurance so far affected with a public interest as to justify legislative regulation of its rates? And we mean a broad and definite public interest. In some degree the public interest is concerned in every transaction between men, the sum of the transactions constituting the activities of life. But there is something more special than this, something of more definite consequence, which makes the public interest that justifies regulatory legislation. We can best explain by examples. The transportation of property —business of common carriers—is obviously of public concern, and its regulation is an accepted governmental power. The transmission of intelligence is of cognate character. There are other utilities which are denominated public, such as the furnishing of *water* and light, including in the latter gas and elec-

> tricity. We do not hesitate at their regulation nor of the fixing of the prices which may be charged for their service. The basis of the ready concession of the power of regulation is the public interest. This is not denied, but its application to insurance is so far denied as not to extend to the fixing of rates," etc.

In mentioning utilities which are denominated public, such as the furnishing of water, etc., it is obvious that the court there (as in Spring Valley Water Works vs. Schottler, 110 U. S., 347) had in mind public water utilities, as generally understood, and was not concerned with any distinction between public systems subject to control and private water businesses not subject to control in respect of rates.

In the dissenting opinion of Justice Lamar (concurred in by the Chief Justice and Justice Van Devanter), after listing the rate regulated occupations, including "the confessedly close case of the irrigation ditches for distributing water" (citing San Diego L. & T. Co. vs. Jasper, 189 U. S., 439, which evidently was not the case in contemplation), it was said (p. 426):

> "It is to be noted that in each instance the power to regulate rates is exercised against a business which in every case used tangible property devoted to a public use. Some of them had a monopoly (Spring Valley Water-Works vs. Schottler, 110 U. S., 354). Some of them had franchises. Most of them used public ways or employed property which they had acquired by virtue of the power of eminent domain. They were therefore subject to the correlative obligation to have the use, of what

had been thus taken by law, fixed by law. And as further pointing out the characteristics of the public use justifying the fixing of prices, it will be noted that, with the exception of toll mills (which, however, do employ property devoted to a public use), they all have direct relation to the business or facilities of transportation or distribution,—to transportation by carriers of passengers, goods, or intelligence by vehicle or wire; to distribution of water, gas, or electricity through ditch, pipe, or wire; to wharfage, storage, or accommodation of property before the journey begins, when it ends, or along the way.

When thus enumerated, they appear to be grouped around the common carrier as the typical public business, and all employing in some way property devoted to a public use."

In the Pipe Line cases (234 U. S., 548), it was held, with respect to the Uncle Sam Oil Co. (p. 562):

"This company has a refinery in Kansas and oil wells in Oklahoma, with a pipe line connecting the two which it has used for the sole purpose of conducting oil from its own wells to its own refinery. It would be a perversion of language, considering the sense in which it is used in the statute, to say that a man was engaged in the transportation of water whenever he pumped a pail of water from his well to his house. So as to oil. When, as in this case, a company is simply drawing oil from its own wells across a State line to its own refinery, for its own use, and that is all, we do not regard it as falling within the description of the act, the transportation being merely an incident to use at the end."

The Chief Justice, however, in concurring in the result, said (pp. 562, 3):

> "It seems to me that the business thus carried on is transportation in interstate commerce within the statute. But despite this I think the company is not embraced by the statute because it would be impossible to make the statute applicable to it without violating the due process clause of the 5th Amendment, since to apply it would necessarily amount to a taking of the property of the company without compensation. It is shown beyond question that the company buys no oil, and by the methods which have been mentioned simply carries its own product to its own refinery; in other words, it is engaged in a purely private business. Under these conditions in my opinion there is no power under the Constitution without the exercise of the right of eminent domain to convert without its consent the private business of the company into a public one."

Mr. Justice McKenna, concurring in the result as to the Uncle Sam Oil Co., but dissenting from the holding that the Act of June 29, 1906, declaring oil pipe lines common carriers, was applicable to pipe line concerns transporting all oil offered upon condition that it first be sold to them on practically their own terms, and, as so applicable, valid as an exercise of the right to regulate commerce, gave what may be regarded as an explanation or definition of the language of the majority opinion, delivered by him, in German Alliance Ins. Co. vs. Lewis, supra, which we have quoted. He said (pp. 564-5, 567):

"It is contended that the act offends the 5th Amendment in that it takes their property without due process of law. But what is due process of law, and wherein does its requirement limit the power of Congress? Neither question can be answered in a word, and the usual considerations are encountered when the courts are called upon to investigate the limits of legislative power. Autocracy is free from such perplexities. When authority can say, 'The State—it is I' it meets no impediments to its exercise. But that extreme illustration is not necessary. Even a government under a Constitution, if it be unwritten, may have a power that leaves nothing for the courts to do other than to enforce the fiats of legislative authority. Under a written Constitution, however, there is a sovereignty superior to the legislature, that of the people expressed in the Constitution. How to reconcile legislation with the limitations of the Constitution and leave government practical in its exercise is a problem which comes to this court often. It is the problem in the case at bar. It is to be regretted that there is no indisputable standard for its solution,—no indisputable test of due process of law. We know that an act of legislation does not necessarily satisfy it. It may, however, be sufficient, or, to be more careful and accurate, there may be a regulation of the uses of property whose legality cannot be denied. Regulation is not a taking, and we are brought to the inquiry, what uses of property will subject it to regulation? I mean regulation in a special sense, not in the sense in which all property, whether its uses be public or private, is subject to regulation. 'Property,' it is said, 'becomes clothed with a public interest when used in a

manner to make it of public consequence, and affect the community at large.' 'When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created.' Munn vs. Illinois, 94 U. S., 113, 24 L. ed. 77; Budd vs. New York, 143 U. S., 517, 36 L. ed., 247, 4 Inters. Com. Rep. 45, 12 Sup. Ct. Rep. 468; Brass vs. North Dakota, 153 U. S., 391, 38 L. ed. 757, 4 Inters. Com. Rep. 670, 14 Sup Ct. Rep. 857; German Alliance Ins. Co. vs. Lewis, 233 U. S., 389, ante, 1011, 34 Sup. Ct. Rep. 612. Manifestly the principle needs the definition of the facts of the cases. In three of them the fees for storage of grain were regulated; in the other the price of fire insurance; but dominant in all, as giving character to the property, was the fact that its use was voluntarily offered to the public. There was no compulsion of use or service. This must be kept in mind as the determining circumstance. Conduct may be regulated which cannot be initially commanded. The rates of interest may be regulated, but loans cannot be compelled. There is further illustration in a case subsequent to those cited. In W. W. Cargill Co. vs. Minnesota, 180 U. S., 452, 45 L. ed. 619, 21 Sup. Ct. Rep. 423, an injunction was sought against the operation of an elevator and warehouse situated on the right of way of a railroad until its operator should have obtained a license from the railroad and warehouse commission of the State under a law of the State. The defendant company bought and sold grain, although its elevator was used for storing its own grain only."

* * * * * *

"This court, by Mr. Justice Harlan, sustained the judgment of the State court and said 'that the mere requirement of a license was not forbidden by the 14th Amendment.' Answering the suggestion that other provisions were repugnant to the Constitution of the United States, it was said that the license would give authority to carry on the business under the valid laws of the State and the valid regulations of the commission. The case, therefore, manifestly decides that the use of the warehouse by others could not have been legally compelled, and in the other cases, as we have seen, it was the act of the parties, not the power of the law, which devoted the property to the public interest. In the Munn Case it was said of the owners of the elevators that there was no attempt to compel them 'to grant the public an interest in their property, but to declare their obligations if they used it in this particular manner.' And further, 'He may withdraw his grant by discontinuing the use; but so long as he maintains the use, he must submit to the control.' "

"In the cases cited, therefore, there was a regulation of uses which were extended voluntarily to others. I recall no case where the use was compelled, and by the use so compelled regulation was justified. The case at bar has no fellow in our jurisprudence."

and at pp. 570-573:

"The companies do not possess the right of eminent domain, and their lines are laid over private rights of way, except some of them for short distances have laid their lines along the rights of way of certain railroads under some contract arrangement with the

railroads, one of them for a distance of about 300 miles. They, however, have in many instances also laid their lines across or along public streets and highways by permission or consent of the local authorities. None of them has ever held itself out as a common carrier, or in fact ever carried oil for others, but they have carried only such oil as they produced from their own wells or purchased from other producers, and which they owned when the transportation took place.

* * * * * *

"In other words, it is argued, the companies have made themselves masters of their respective fields by the constraint of the sale of the oil of other owners to them upon terms more or less dictated by them by availing themselves of their 'monopoly of the means of transportation.' This is the charge. The facts of the case do not sustain it except as they exhibit the advantages of the possession of property which others do not possess. Must it be shared by those others for that reason? The conception of property is exclusiveness, the right of exclusive possession, enjoyment, and disposition. Take away these rights and you take all that there is of property. Take away any of them, force a participation in any of them, and you take property to that extent. These are commonplaces, but at times—it may be always—commonplaces are our best guides when rights are concerned. They are pertinent to this case. The employment of one's wealth to construct or purchase facilities for one's business greater than others possess constitutes no monopoly that does not appertain to all property. Such facilities may give advantages, and, it may be, power; so does all property and in proportion

to its extent. It may well, then, be asked—What extent of trade advantages, what degree of power in purchasing, what superiority in facilities of transportation or disposition of articles may be grounds of the exercise of congressional control? If the owner of a small oil well may be given rights in the facilities of the appellee companies, why may not the owner of a small business be given rights in the facilities of a larger business, if Congress sees fit to say that the public welfare requires the gift? Can any privilege be claimed for oil that cannot be claimed for other commodities? May a jobber of merchandise in Washington who conducts a trade in Baltimore and other places, and owns special facilities for the transportation of his merchandise, be compelled to share them with competitors who may not be able to afford as ample ones, and in consequence be forced to sell their property to him at a disadvantage? Or, recurring to the illustration of W. W. Cargill Co. vs. Minnesota, can one who erects elevators for the storage of grain of his own raising (such instances exist), and uses it as well for grain of his purchase (there are more of such instances), be compelled to share their advantage with other growers or purchasers of grain? The advantages of his situation are quite as manifest as the advantages the appellees enjoy, and the effect on interstate commerce transportation as marked. Upon the same principle, one who builds a railroad to a coal field or to a forest must share it with other owners in the field or forest if he ventures to purchase their productions. Such is the principle of the present decision. Under it what attribute of private property is left?

"Let us not exaggerate the conditions or

> by form of statement put out of view essential elements. What duress is employed that is not employed when terms are exacted as a condition of the use of property? Or, rather, and more accurately, what duress is used except the exclusion of others from the use of property which they do not own? There were no prior or present rights in other owners of oil wells to the use of the lines of the appellee companies. They contributed nothing to the construction of the lines, and their exclusion from their use is the exclusion resulting from the separate ownership of property as distinguished from rights of community ownership."

* * *

It is thus evident that, in adopting the comprehensive formula, "so far affected with a public interest" as to justify regulation of rates, in deciding the German Alliance Insurance Co. case, this Court did not strike down the distinctions which had been recognized in previous cases, but merely added insurance to the list of businesses held subject to regulation.

The principles and distinctions recognized by this Court have been applied by the Supreme Court of California in a line of cases which, we submit, are conclusive of the present question.

In Burr vs. Maclay Rancho Water Co., 160 Cal., 268, 280, 116 Pac., 715, 721, it was said:

> "The water taken by the defendants to supply the needs of the interveners is not taken for public use. It is not offered to the public generally, or to all who may want it within a certain territory. It is taken solely to ful-

> fill the private contractual obligations of the defendants to deliver water to certain lots which it has sold with a water right. This is a private use. Hildreth vs. Montecito, 139 Cal. 29, 72 Pac. 395; Barton vs. Riverside, supra, 155 Cal. 518, 101 Pac. 790, 23 L. R. A. (N. S.) 331; Gilmer vs. Lime Point, 18 Cal. 252."

In Thayer vs. California Development Company, 164 Cal., 117, 128 Pac., 21, after reviewing at great length the distinctions between public and private use and the authorities, the Court held that the water appropriated by the California Development Company was devoted only to private use, and the Company could not be compelled to furnish water to the plaintiff, saying:

> "Under the doctrines thus established, it is evident that the California Development Company has not dedicated to public use the water which it diverts from the Colorado river, and that it has not offered it for sale, rental, or distribution in such a manner as to constitute a public use thereof. In its notice of appropriation, it declared that it claimed the water for itself and others. It did not claim it for use by the public, nor designate the 'others' to whom it was to be furnished. The notice stated that the water was claimed for the purpose of developing power, and for the irrigation of lands in the 'New River Country,' situated in what was then San Diego County, but it did not say that it was to be used upon all said lands, nor generally upon the lands in said country. Upon each of these essential elements of a public use, the most

that can be said is that the notice is silent. There never was any declaration by that company that the water was to be devoted to public use, or that it was to be offered generally for sale in California, or to all landowners in the New River Country, or in any district or part thereof, or even to all landowners along the lines of its ditches or the ditches of its auxiliary companies. No such offer or declaration has ever been made, nor has it ever been the custom or practice of the company or of its auxiliary companies to sell water in that way. The method adopted by it for the disposition of the water, and its conduct in distributing the same, have been wholly inconsistent with the idea that the water was held out for general sale or distribution, and it has been consistent only with the theory that the intention was to retain control of the water to the extent, at least, of choosing for itself the persons and corporations to whom it should be sold or delivered, and the terms and conditions on which such sales or deliveries should be made. It has, in fact, retained such control, and it has not disposed of the water otherwise than according to this plan. For this purpose it laid out seven separate districts in the New River Country, with distinct boundaries. In each of these it organized a private water corporation. The purpose of each corporation, as expressed in its articles, was to procure water for the irrigation of such lands situated within the exterior limits of the district as should belong to its stockholders, and to no other persons. Each share of the stock was to be located upon certain designated lands—one share being allotted to each acre—and the water was to be apportioned ratably among the stockholders

according to the number of shares owned. The stock was not free, but was to be sold at a fixed price. To these corporations, and to no other persons, the Development Company sold the water it diverted, receiving therefor certain shares of stock of said corporations, with the right to sell the same and have them located on lands in the district by the purchasers, and with an agreement by each auxiliary company to pay thereafter an annual charge of 50 cents per acre foot for the water delivered to it. There were other restrictions which it is not necessary to mention. The Development Company sold the stock of these auxiliary companies to the landowners within the respective districts, and the same has been located by the respective companies upon particular tracts of land therein. No water has been sold or distributed, or offered for sale or distribution, in any other way, or to any other persons, except small quantities furnished by special agreement to a power company and to the city of Imperial. No right in any other person to demand or receive water upon any terms or at all has ever been recognized, allowed, or conceded either by the Development Company or any of the auxiliary companies. It appears, therefore, that the Development Company has always, either directly or through the auxiliary companies, selected the persons to whom it would sell and distribute the water and fixed its own prices. A use thus restricted, limited, and controlled by the owner is in no proper sense, according to the foregoing authorities, a public use.

"We have hitherto considered the case upon the theory that all the other corporations mentioned, including the Mexican Company,

are but subsidiary to and agents of the California Development Company for the carrying out of its plan for the distribution of its water. The effect is the same, however, if those companies should become, or be considered independent companies—that is, merely purchasers of the Development Company's water. It is true that, since their organization, the districts, by reason of the sales of their corporation stock to the land-owners, have become independent, so far as management is concerned, of the Development Company, although still bound by the contracts made between them. But if they are viewed as independent companies, the fact remains that the Development Company has not sold, or proposed to sell, or disposed of its water at all, except to those companies and to them only upon the terms and restrictions fixed by the respective contracts, and that those companies have not applied the water to public use, but have held the same exclusively for their respective shareholders upon terms fixed by the by-laws of the company. It appears that the Mexican Company is selling a part of the water to consumers in Mexico along its line. This does not change the result. It does not appear that this water is sold or offered to the public generally, or to all landowners along the line. Even if it were so, the fact that this company is carrying on a public use in Mexico would not affect the character of the service of the other companies doing business in California. It is very clear from all the proceedings taken that the Development Company not only did not intend to engage in a public service but that it was well advised concerning such service, and carefully devised its plan and drew its

> contracts to avoid being placed in that position. The Company has placed itself clearly within the principles stated in McFadden vs. Los Angeles, supra, McDermont vs. Anaheim Co., supra, and Barton vs. Riverside, supra, under which the use which it makes of the water is not a public use."

In Del Mar Water Light & Power Co. vs. Eshleman, 140 Pac. 591, the Supreme Court of California reviewed and set aside the decision and order of the Railroad Commission of California holding the Del Mar Company to be a public service corporation and requiring it to furnish water to one Glass, saying (per Melvin, J.):

> "That the intention of the incorporators of the water company was merely to furnish an instrumentality for managing and operating the water department of the South Coast Land Company there can be little doubt * * *
>
> "But in practice its contracts were with the vendees of the land company. The serving of water to the 17 inhabitants of the 'old town' of Del Mar was not sufficient to make the water company a public utility, offering its water to the general public. When the land company bought all the unsold lots of the town site its property surrounded the places of residence of these inhabitants of 'old town.' It bought and abandoned the old wells from which these people derived their supply, and its arrangement with the water company to serve water to them no more constituted the latter a public service corporation than did that contract by which the Santa Fe Land Improvement Company was to receive a certain

quantity of the water which might be developed. The sales to contractors who were engaged in road building were no more significant than would be similar accommodations by a farmer from his wells, and the same thing may be said of the trifling amounts of water sometimes sold to neighbors and by them hauled away in barrels. That the water company had refused to furnish persons who had not purchased land from the South Coast Land Company was shown without contradiction; and while the reasons assigned were sometimes the scarcity of water, the fact of refusal remains. The fact is highly significant. It is also significant that under the arrangements which the water company had with the land company the latter was furnished with a large amount of water through unmetered pipes for the use of its hotel and other buildings. All of these facts and circumstances indicate that the Del Mar Water, Light & Power Company was merely the incorporated water department of the South Coast Land Company. Indeed, the Railroad Commission, while holding that the water company was organized as a public utility, recognized some superior right to the water by the South Coast Land Company. The following quotation from the opinion illustrates this:

* * * * * *

"It is explained in the brief that this language merely meant that if in the future it becomes necessary to limit the territory to be served by the utility, it would be fair and reasonable to consider first the lands of the South Coast Land Company. If, however, the water company has held itself out to the general public of Del Mar as willing to furnish water

to that territory, why should the former ownership rather than the location of property be the controlling factor in case a subsequent limitation of the area to be served should become necessary? No logical reason presents itself to our minds why one part of the community should thus be favored, unless there be a recognition of the right of private contract between the water company and a selected class of customers, and the moment such right is recognized the status of the water company as a supposed public utility disappears.

* * * * * *

"We are of the opinion that the Del Mar Water, Light & Power Company never intended to engage in a public service, and that it did not do so. Whenever the land company sold a lot it agreed to conduct electricity and water to the property line, and the purchaser in each case entered into a contract with the water company for the continued furnishing of those commodities. The facts of this case bring it squarely within the principles announced in Thayer vs. California Development Company, 164 Cal. 119, 128 Pac. 21. The Del Mar Water, Light & &Power Company was organized for the purpose of selling water to the purchasers of real property from the South Coast Land Company. It has consistently adhered to that purpose. If the purchaser of land from a rival vendor desires water, he may develop it by buying water rights or by condemnation of water for himself and neighbors. He may not demand a part of the private supply of this petitioner. The determination that the petitioner is a public utility is erroneous, and the Railroad Commission is without jurisdiction in the premises."

The court below in its opinion, as authority for enjoining the enforcement of the order of the Arizona Corporation Commission requiring Mrs. Van Dyke to furnish water to the Prochaska (Live Oak) addition, quoted from a concurring opinion in the Del Mar case, which, after asserting that the Railroad Commission has no power to compel a corporation which owns property in private right and has not dedicated it to any public use, to apply it to a public use of any kind, proceeded upon the theory that a finding that the Del Mar Company had not dedicated its property to any public use was not necessary to decision of that case, but that, assuming that the company had made a limited dedication to public use, the Commission was without jurisdiction to require it to extend its service area.

The Court below thus assumed that Mrs. Van Dyke, in furnishing water to purchasers of lots in her subdivision, had made a limited dedication of her water system to public use, and failed to appreciate the distinctions recognized in the California cases.

It is to be noted at this point that the California Courts recognize that corporate character of the owner of a water system is not in itself ground for governmental control of the use of its property, but that voluntary dedication to public use is the essential element.

What amounts to dedication to public use, is further illustrated by the recent case of Palermo Land & Water Company vs. Railroad Commission, 160 Pac. 228, wherein the Supreme Court of California after saying:

> 1. The petitioner contends that it is not a public utility, and is, therefore, not subject to the jurisdiction of the Commission. The Palermo Company, it is claimed, has not offered its water to the public, but has merely entered into 'private contractual obligations * * * to deliver water to certain lots which it has sold with a water right.' Burr vs. Maclay R. W. Co., 160 Cal. 268, 280, 116 Pac. 715, 721. Attention is directed to several decisions of this court holding that such disposition of water 'is essentially a matter of private contract and it shows no intent to create a public use.' Thayer vs. California D. Co., 164 Cal. 117, 128 Pac. 21; Burr vs. Maclay R. W. Co., supra; Hildreth vs. Montecito, etc., Co., 139 Cal. 22, 72 Pac. 395; Barton vs. Riverside W. Co., 155 Cal. 518, 101 Pac. 790. It is further argued that, if our statutory provisions (St. 1913, p. 84; St. 1915, p. 1273) are to be construed as declaring that water companies of this character are public utilities, such statutes are in violation of both the federal and State Constitutions. We do not, however, feel called upon to go into the constitutional questions thus suggested, for the reason that we feel satisfied that, without regard to statutory provisions, the conduct of the Palermo Company was such as to take its operations out of the category of a private use as defined by Thayer vs. Development Co., and like cases."

found that the Palermo Company in deeds of conveyance of lots had covenanted to furnish water "at such rates as may be fixed by law in the district in which said lands are situated," which implied that the service was to be that of a public utility, and had applied

to the Railroad Commission to have its rates for water established and had secured an order allowing an increase in rates, which was effective to "change the use from a private and particular use to a public use, so as to make the service and terms of delivery subject to regulation and control by public authority. (Franscioni vs. Soledad Land & Water Co., 170 Cal., 221, 149 Pac. 161)."

It appears, therefore, that in California where the law of western water and water rights and commission control may be said to have been principally developed, it is settled that the establishment of a water system for supplying water to purchasers of lots in a sub-division owned by the owner of the water system is a private use and that attempted governmental control of service or rates would be taking private property without compensation and without due process of law.

The sense of the people of California on this question must be presumed to be the sense of the people of Arizona and may be accepted by this Court as a safe criterion. But aside from this convincing recognition of the private and non-public character of Mrs. Van Dyke's water business, the same result follows from application of the principles and distinctions recognized by this court.

Mrs. Van Dyke pumps the water on her own land, stores it in tanks on her own land, and thence conducts it through pipes all upon her own land (the strips reserved for conduits are owned in fee by her) and delivers to purchasers at the boundary line between her and their properties. The situation is the same as if she stood on one side of the boundary line

and handed water over it to the purchaser standing on his own land.

She has not dedicated or devoted her property to the use of the public and, as the court below held, she is not under obligation to sell water to the public generally.

Water when needed for fire protection purposes is used without compensation as an incident of her townsite business.

The dominant characteristic of public use is that all of the public within reasonable range of the utility are beneficiaries.

Sufficient appears in the record to disclose that the Van Dyke subdivision is but one of four or more independent subdivisions constituting the settlement known as Miami (it is not a municipality) which has grown up with the development of the great copper mining industry at that point. As a geographical fact, of which the Court may take notice, the Prochaska (Live Oak) and Davis Canyon subdivisions are nearer the Van Dyke water plant than the Van Dyke subdivision. Recognition that the residents of the Live Oak and Davis Canyon subdivisions are not entitled to participate in the use of the Van Dyke water system, is, therefore, necessarily recognition that the latter is a private business and not a public utility.

Mrs. Van Dyke enjoys no franchise or privilege by grant from the State, express or implied.

If she has a valid water right by appropriation, as we contend, it is a private right, originating in grant from the United States, before the creation of the State, and not burdened with any obligation to devote to public use. In Palmer vs. Railroad Commission of

California, 138 Pac. 997, 1001 (approved by this court in San Joaquin Water Co. vs. Stanislaus County, supra), it was said:

> "Finally, on this point, the decisions in this State are to the same effect. Lux vs. Haggin we have already mentioned. The recent case of Thayer vs. California Development Co., 164 Cal. 125, 128 Pac. 21, states the rule to be that the right obtained by an appropriation under the Code is a private right; that the waters appropriated are not thereby appropriated to public use; and that they remain private property until the appropriator dedicates them to public use, which he may do or not at his own pleasure. The other cases holding this doctrine directly or in effect are cited in that case,"

and held that, as the water right in question vested before the constitutional amendment declaring all water or use of water to be the property of the people, it was not affected thereby.

The Arizona Constitution, Article XVII, Sec. 2, provided:

> "All existing rights to the use of any of the waters in the State for all useful or beneficial purposes are hereby recognized and confirmed."

The status and incidents of a water right such as claimed by Mrs. Van Dyke, were the same in Arizona as in California.

Furthermore, if Mrs. Van Dyke controls the water by virtue of a water right by appropriation, whatever may be the status thereof, the water, when pumped

into the storage tanks, is reduced to possession and becomes her personal property.

1 Wiel Water Rights in the Western States, 3rd ed., Secs. 33, 35, 690, and authorities cited.

If, on the other hand, Mrs. Van Dyke has not a water right by appropriation, but is pumping, storing and selling only diffused ground and percolating water, she is dealing with part of her real estate.

She has no monopoly, or even a virtual monopoly, as said in some of the cases. Monopoly in that sense is inseparable from dedication or devotion to public use, as pointed out by Justice McKenna in the Pipe Line Cases, *supra.*

A water right by appropriation is an exclusive right, but, as we have seen, it becomes private property, with regard to which the owner has the same rights as attach to any other private property.

If the water is diffused ground and percolating water, even the incident of exclusive control disappears, and with it any semblance of monopoly.

In either case, any of the property holders to whom Mrs. Van Dyke sells water could sink wells upon their own property. It is more advantageous and economical, however, for them to purchase water at the rates fixed by her.

It appears that others are or have been operating wells and furnishing water to adjoining properties. One Mackay operates a water system supplying a different section of Miami (affidavit of Geary, Record, p. 94). And one Prochaska, who subdivided forty acres as the Live Oak addition to Miami, established a water system but discontinued operating it when

he found he was pumping water at a loss of sixty dollars a month (affidavit of Cleve W. Van Dyke, Record, p. 90) and sought, through the Corporation Commission, to compel Mrs. Van Dyke to furnish water. The court below, however, enjoined the enforcement of the order of the Commission (Record, p. 104).

Mrs. Van Dyke, through superior foresight, judgment and enterprise, has acquired land and water having peculiar advantages. She has not consented to share those advantages with the public, but has elected to use them as an aid in the development of her townsite enterprise. It would be destructive of the sanctity of private property and liberty of contract to compel her to share those advantages with the purchasers of lots in her subdivision upon other than her own terms.

As a practical matter, the arrangement for water has been virtually a part of the contract of sale of lots in the Van Dyke subdivision. The lot purchasers bought with the understanding that they might purchase water from Mrs. Van Dyke's water system at the rates fixed by her; but, before service connection was permitted, they were required to sign written contracts to pay for the water the uniform rates fixed by her. As has been noticed, the Corporation Commission, by order No. 8 (Record, p. 40), undertook to annul those contracts, in the face of Sections 4 and 32 of Article II of the Arizona Constitution, supra, and the Federal Constitution.

If the rates could be reduced through exercise of the police power, the value of the lots would proportionately increase, even though slightly, and the re-

sult would be to take from Mrs. Van Dyke, as owner of the water system, and doubly give to the lot owners through decrease in rate and increase in lot value.

The status of Mrs. Van Dyke is comparable to that of the Uncle Sam Oil Company. She pumps, stores, and conveys in pipes on her own land, only water which is her private property, to points where she sells it. One difference, which does not affect the result, is that the Uncle Sam Oil Company, after pumping and conveying only its own oil, refines it before selling it; another, which favors her, is that instead of using rights of way for pipe lines, Mrs. Van Dyke's pipe lines are all on her own land.

We submit that it cannot be said that Mrs. Van Dyke's water business is "affected with a public interest" in any sense which would justify government rate fixing.

The decree below, in so far as it denied injunction restraining the defendants from enforcing the orders of the Corporation Commission, should be reversed and injunction directed to issue as prayed.

Respectfully submitted,

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APPENDIX.

Constitution of Arizona.

Article XIV.—Corporations other than Municipal.

Section 1. The term "corporation," as used in this article, shall be construed to include all associations and joint-stock companies having any powers or privileges of corporations not possessed by individuals or copartnerships, and all corporations shall have the right to sue and shall be subject to be sued, in all courts, in like cases as natural persons.

Sec. 2. Corporations may be formed under general laws, but shall not be created by special acts. Laws relating to corporations may be altered, amended, or repealed at any time, and all corporations doing business in this State may, as to such business be regulated, limited and restrained by law.

Sec. 3. All existing charters under which a bona fide organization shall not have taken place and business commenced in good faith within six months from the time of the approval of this constitution shall thereafter have no validity.

Sec. 4. No corporation shall engage in any business other than that expressly authorized in its charter or by the law under which it may have been or may hereafter be organized.

Sec. 5. No corporation organized outside of the limits of this State shall be allowed to transact business within this State on more favorable conditions than are prescribed by law for similar corporations organized under the laws of this State; and no for-

eign corporation shall be permitted to transact business within this State unless said foreign corporation is by the laws of the country, State, or Territory under which it is formed permitted to transact a like business in such country, State, or Territory.

Sec. 6. No corporation shall issue stock, except to bona fide subscribers therefor or their assignees; nor shall any corporation issue any bond, or other obligation, for the payment of money, except for money or property received or for labor done. The stock of corporations shall not be increased, except in pursuance of a general law, nor shall any law authorize the increase of stock of any corporation without the consent of the person or persons holding the larger amount in value of the stock of such corporation, nor without due notice of the proposed increase having been given as may be prescribed by law. All fictitious increase of stock or indebtedness shall be void.

Sec. 7. No corporation shall lease or alienate any franchise so as to relieve the franchise, or property held thereunder, from the liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise or of any of its privileges.

Sec. 8. No domestic or foreign corporation shall do any business in this State without having filed its articles of incorporation or a certified copy thereof with the corporation commission, and without having one or more known places of business and an authorized agent, or agents, in the State upon whom process may be served. Suit may be maintained against a foreign corporation in the country where an agent of such corporation may be found, or in the county

where the cause of action may arise.

Sec. 9. The right of exercising eminent domain shall never be so abridged or construed as to prevent the State from taking the property and the franchises of incorporated companies and subjecting them to public use the same as the property of individuals.

Sec. 10. In all elections for directors or managers of any corporation, each shareholder shall have the right to cast as many votes in the aggregate as he shall be entitled to vote in said company under its charter multiplied by the number of directors or managers to be elected at such election; and each shareholder may cast the whole number of votes, either in person or by proxy, for one candidate, or distribute such votes among two or more such candidates; and such directors or managers shall not be elected otherwise.

Sec. 11. The shareholders or stockholders of every banking or insurance corporation or association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporation or association, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares or stock.

Sec. 12. Any president, director, manager, cashier, or other officer of any banking institution who shall receive, or assent to the reception of, any deposits after he shall have knowledge of the fact that such banking institution is insolvent or in failing circumstances shall be individually responsible for such deposits.

Sec. 13. No persons acting as a corporation under

the laws of Arizona shall be permitted to set up, or rely upon, the want of a legal organization as a defense to any action which may be brought against them as a corporation, nor shall any person or persons who may be sued on a contract now or hereafter made with such corporation, or sued for any injury now or hereafter done to its property, or for a wrong done to its interests, be permitted to rely upon such want of legal organization in his or their defense.

Sec. 14. This article shall not be construed to deny the right of the legislative power to impose other conditions upon corporations than those herein contained.

Sec. 15. Monopolies and trusts shall never be allowed in this State, and no incorporated company, copartnership, or association of persons in this State shall directly or indirectly combine or make any contract with any incorporated company, foreign or domestic, through their stockholders or the trustees or assigns of such stockholders, or with any copartnership or association of persons, or, in any manner whatever, to fix the prices, limit the production, or regulate the transportation of any product or commodity. The legislature shall enact laws for the enforcement of this section by adequate penalties, and in the case of incorporated companies, if necessary for that purpose, may, as a penalty, declare a forfeiture of their franchises.

Sec. 16. The records, books, and files of all **public service corporations**, State banks, building and loan associations, trust, insurance, and guaranty companies shall be at all times liable and subject to the full visitorial and inquisitorial powers of the State, notwithstanding the immunities and privileges se-

cured in the declaration of rights of this constitution to persons, inhabitants, and citizens of this State.

Sec. 17. Provision shall be made by law for the payment of a fee to the State by every domestic corporation, upon the grant, amendment, or extension of its charter, and by every foreign corporation upon its obtaining a license to do business in this State; and also for the payment, by every domestic corporation and foreign corporation doing business in this State, or an annual registration fee of not less than $10, which fee shall be paid irrespective of any specific license or other tax imposed by law upon such company for the privilege of carrying on its business in this State, or upon its franchise or property; and for the making, by every such corporation, at the time of paying such fee, of such report to the corporation commission of the status, business, or condition of such corporation, as may be prescribed by law. **No foreign corporation shall have authority to do business in this State until it shall have obtained from the corporation commission a license to do business in the State,** upon such terms as may be prescribed by law. The legislature may relieve any purely charitable, social, fraternal, benevolent, or religious institution from the payment of such annual registration fee.

Sec. 18. It shall be unlawful for any corporation, organized or doing business in this State, to make any contribution of money or anything of value for the purpose of influencing any election or official action.

Sec. 19. Suitable penalties shall be prescribed by law for the violation of any of the provisions of this article.

Article XV.—The Corporation Commission.

Section 1. **A corporation commission is hereby created** to be composed of three persons, who shall be elected at the general election to be held under the provisions of the enabling act approved June 20, 1910, and whose term of office shall be coterminous with that of the governor of the State elected at the same time, and who shall maintain their chief office, and reside, at the State capital. At the first general State election held under this constitution at which a governor is voted for, three commissioners shall be elected who shall, from and after the first Monday in January next succeeding said election, hold office as follows:

The one receiving the highest number of votes shall serve six years, and the one receiving the second highest number of votes shall serve four years, and the one receiving the third highest number of votes shall serve two years. And one commissioner shall be elected every two years thereafter. In case of vacancy in said office, the governor shall appoint a commissioner to fill such vacancy. Such appointed commissioner shall fill such vacancy until a commissioner shall be elected at a general election as provided by law, and shall qualify. The qualifications of commissioners may be prescribed by law.

Sec. 2. All corporations other than municipal engaged in carrying persons or property for hire; or in furnishing gas, oil, or electricity for light, fuel, or power; or in furnishing water for irrigation, fire protection, or other public purposes; or in furnishing, for profit, hot or cold air or steam for heating or cool-

ing purposes; or in transmitting messages or furnishing public telegraph or telephone service, and all corporations other than municipal, operating as common carriers shall be deemed public-service corporations.

Sec. 3. The **corporation commission** shall have full power to and shall prescribe just and reasonable classifications to be used, and just and reasonable rates and charges to be made and collected, by **public-service corporations** within the State for service rendered therein, and make reasonable rules, regulations, and orders by which such corporations shall be governed in the transaction of business within the State, and may prescribe the forms of contracts and the systems of keeping accounts to be used by such **corporations** in transacting such business, and make and enforce reasonable rules, regulations, and orders for the convenience, comfort, and safety, and the preservation of the health of the employees and patrons of such **corporations**: **Provided,** That incorporated cities and towns may be authorized by law to exercise supervision over **public-service corporations** doing business therein, including the regulation of rates and charges to be made and collected by such corporations: **Provided further**, That classifications, rates, charges, rules, regulations, orders, and forms or systems prescribed or made by said **corporation commission** may from time to time be amended or repealed by such commission.

Sec. 4. The **corporation commission** and the several members thereof shall have power to inspect and investigate the property, books, papers, business methods, and affairs of any corporation whose stock shall

be offered for sale to the public **and of any public-service corporation doing business within the State,** and for the purpose of the commission and of the several members thereof shall have the power of a court of general jurisdiction to enforce the attendance of witnesses and the production of evidence by subpoena, attachment, and punishment, which said power shall extend throughout the State. Said commission shall have power to take testimony under commission or deposition either within or without the State.

Sec. 5. The corporation commission shall have the sole power to issue certificates of incorporation to companies organizing under the laws of this State, and to issue licenses to foreign corporations to do business in this State, as may be prescribed by law.

Sec. 6. The lawmaking power may enlarge the powers and extend the duties of the corporation commission, and may prescribe rules and regulations to govern proceedings instituted by and before it; but until such rules and regulations are provided by law, the commission may make rules and regulations to govern such proceedings.

Sec. 7. Every public-service corporation organized or authorized under the laws of the State to do any transportation or transmission business within the State shall have the right to construct and operate lines connecting any points within the State and to connect at the State boundaries with like lines; and every such corporation shall have the right with any of its lines to cross, intersect, or connect with any lines of any other public-service corporation.

Sec. 8. Every public-service corporation doing a

transportation business within the State shall receive and transport, without delay or discrimination, cars loaded or empty, property, or passengers delivered to it by any other public-service corporation doing a similar business, and deliver cars, loaded or empty, without delay or discrimination, to other transportation corporations under such regulations as shall be prescribed by the corporation commission or by law.

Sec. 9. Every public-service corporation engaged in the business of transmitting messages for profit shall receive and transmit, without delay or discrimination, any messages delivered to it by any other public-service corporation engaged in the business of transmitting messages for profit, and shall with its lines make physical connection with the lines of any public-service corporation engaged in the business of transmitting messages for profit under such rules and regulations as shall be prescribed by the corporation commission or by law: **Provided,** That such public-service corporations shall deliver messages to other such corporations, without delay or discrimination, under such rules and regulations as shall be prescribed by the corporation commission or by law.

Sec. 10. Railways heretofore constructed, or that may hereafter be constructed, in this State are hereby declared public highways, and all railroad, car, express, electric, transmission, telegraph, telephone, or pipe line corporations for the transportation of persons or of electricity, messages, water, oil, or other property for profit are declared to be common carriers and subject to control by law.

Sec. 11. The rolling stock and all other movable property belonging to any public-service corporation

in this State shall be considered personal property, and its real and personal property, and every part thereof, shall be liable to attachment, execution, and sale in the same manner as the property of individuals; and the lawmaking power shall enact no laws exempting any such property from attachment, execution, or sale.

Sec. 12. All charges made for service rendered or to be rendered by public-service corporations within this State shall be just and reasonable, and no discrimination in charges, service, or facilities shall be made between persons or places for rendering a like and contemporaneous service, except that the granting of free or reduced rate transportation may be authorized by law, or by the corporation commission, to the classes of persons described in the act of Congress approved February 11, 1887, entitled "An act to regulate commerce," and the amendments thereto, as those to whom free or reduced rate transportation may be granted.

Sec. 13. All public-service corporations and corporations whose stock shall be offered for sale to the public shall make such reports to the corporation commission, under oath, and provide such information concerning their acts and operations as may be required by law or by the corporation commission.

Sec. 14. The corporation commission shall, to aid it in the proper discharge of its duties, ascertain the fair value of the property within the State of every public-service corporation doing business therein; and every public-service corporation doing business within the State shall furnish to the commission all evidence in its possession, and all assistance in its

power, requested by the commission in aid of the determination of the value of the property within the State of such public-service corporation.

Sec. 15. No public-service corporation in existence at the time of the admission of this State into the Union shall have the benefit of any future legislation except on condition of complete acceptance of all provisions of this constitution applicable to public-service corporations.

Sec. 16. If any public-service corporation shall violate any of the rules, regulations, orders, or decisions of the corporation commission such corporation shall forfeit and pay to the State not less than $100 nor more than $5,000 for each such violation, to be recovered before any court of competent jurisdiction.

Sec. 17. Nothing herein shall be construed as denying to public service corporations the right of appeal to the courts of the State from the rules, regulations, orders, or decrees fixed by the corporation commission, but the rules, regulations, orders, or decree so fixed shall remain in force pending the decision of the courts.

Sec. 18. Until otherwise provided by law, each commissioner shall receive a salary of $3,000 a year, together with his actual necessary expenses when away from home in the discharge of the duties of his office.

Sec. 19. The corporation commission shall have the power and authority to enforce its rules, regulations, and orders by the imposition of such fines as it may deem just, within the limitations prescribed in section 16 of this article.

FILED
MAR 12 1917
JAMES D. MAHER
Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1916.

No. 52.

IDA A. VAN DYKE AND CLEVE W. VAN DYKE, *Appellants*,

vs.

W. PAUL GEARY, AMOS W. COLE AND FRANK A. JONES, MEMBERS OF THE CORPORATION COMMISSION OF THE STATE OF ARIZONA, ET AL.

BRIEF OF APPELLEES.

WILEY E. JONES,
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1916.

No. 52.

IDA A. VAN DYKE AND CLEVE W. VAN DYKE, *Appellants*,

vs.

W. PAUL GEARY, AMOS W. COLE AND FRANK A. JONES, MEMBERS OF THE CORPORATION COMMISSION OF THE STATE OF ARIZONA, ET AL.

BRIEF OF APPELLEES

STATEMENT

On the 14th day of February, 1912, Arizona was admitted as a state and its constitution, which took effect on that date, provided a basic law covering corporations and by Article XV created the Corporation Commission. After the admission of Arizona as a state, the Corporation Commission made an order, regulating the rates charged for water in the town of Miami by the appellants in this case. Appellants claim that

the Corporation Commission had no power to regulate rates charged by them in this case, they being individuals and not a corporation. Appellants went into the United States District Court for relief and that court having decided the matter adversely to appellants, they now appeal to this court. The Attorney General of the State of Arizona is now and has been the attorney for appellees from the commencement of this suit before the Corporation Commission.

The Attorney General filed a brief in this case in the United States District Court in and for the district of Arizona, and the argument which we present in this brief, is substantially the argument presented by the Attorney General in the District Court below.

Ida A. Van Dyke, one of the appellants herein, has been, since the 28th day of November, 1911, owner of a certain water plant and water system, located in the town of Miami, state of Arizona, and has been since said date, and is now engaged in the distribution and sale for profit, of water to the inhabitants of said town for domestic, commercial and fire purposes. On the 17th day of October, 1913, the Corporation Commission of the State of Arizona instituted an investigation to determine the reasonableness of rates charged by sad Ida A. Van Dyke to the inhabitants of said town of Miami for water and filed a complaint against the said Ida A. Van Dyke and Cleve W. Van Dyke, also one of the appellants herein. The appellants, in answering the said

complaint of the Corporation Commission, objected to the jurisdiction of the Corporation Commission, upon the grounds and for the reason stated by them, that under the constitution and laws of the state of Arizona, the Corporation Commission had no right to regulate a public utility owned by an individual. This seems to be the fundamental though not the only question presented by appellants in this case. Appellants filed a plea in bar before the Corporation Commission which said plea was overruled by the Corporation Commission on the 10th day of November, 1913. The Corporation Commission then directed its expert engineer and expert accountant to examine the properties owned by the said Ida A. Van Dyke and to make a report on the physical valuation of said properties and of the income and operating expense thereof. Subsequent thereto, on the 11th and 12th days of December, 1913, a hearing was had by the Arizona Corporation Commission at the town of Miami for the purpose of taking testimony as to the valuation of the water plant and system owned by appellants, and for determining the reasonableness of the rates charged by the appellants for water. At said hearing, an extensive report was filed by the engineer and accountant of the Corporation Commission, which report was the result of several weeks extensive investigation into the valuation of said water plant and system at Miami, so owned by appellants.

At said hearing appellants, though represented

by counsel, depending upon their contention that the Corporation Commission had no jurisdiction to regulate said utility, refused and declined to submit any testimony whatsoever regarding the constituent units of said water plant and system, or the valuation of any part thereof. No testimony was offered by the appellants as to the value of any real estate holdings owned by them, or the character of the same, or as to the value or the character of any part of said plant and system, and no testimony was offered or suggestion made by appellants at said hearing as to the existance or value of any water rights owned by them. These facts appear by the affidavits of Engineer Ferguson, Accountant Sangster and W. P. Geary, then chairman of the Corporation Commission.

At said hearing it developed that water obtained by appellants for the purpose of distribution is pumped from wells located in a gulch, situated between two lines of foothills, near the town of Miami. These wells do not touch any underground stream, but the water in them is only seepage from the foothills and mountains. It also developed that appellants had taken up some of the land around these foothills by means of mining locations, but it did not appear at said hearing that these lands were held for other than speculative mining purposes. No storage of water in any form is maintained by appellants in the operation of their water plant and system. No testimony was offered by appellants herein as

to the value of any of said real estate holdings or as to the value and nature of any part of the water plant and system, they refusing at said hearing to present any testimony upon the alleged grounds that the Commission had no jurisdiction to regulate the utility owned by appellants.

On the 1st day of May, 1914, subsequent to said hearing, the Corporation Commission entered its opinion and order regulating rates to be charged by appellants. In said order the Commission placed a value upon the water plant and system owned by appellants, determining the value to be the present value or a reproduction value new, depreciated. The Commission allowed to appellants the value of ten acres of land, upon which the wells of the water plant and system owned by appellants are located, which was considered sufficient real estate holdings to cover said wells and real estate holdings enough to prevent contamination of said wells. The Commission disallowed any valuation for any other real estate upon which the water pipes and system of appellants are located. The Commission allowed for all the physical units of the water plant and system upon the theory hereinbefore mentioned, including in the value of said physical units the cost of material, the cost of installation and in said units cost, general contractor's profits and other items of construction. To these items it added a percentage of 14 per cent to cover the overhead charges not included in the unit price. The Commission further made an allowance for a going

value, also an adequate allowance for working capacity and by these results obtained the present value for rate making purposes of the water plant and system owned by appellants of $40,105.00. From the report of the accountant of the Commission, a correct analysis of the operating expenses and income derived by appellants from the operation of said water plant, was determined which was at the time of the hearing 45 per cent on the valuation of said plant as found by the Commission. In addition to the operating expenses, the Commission added 3 and 1-2 per cent for a depreciation and reserve fund in addition to that, a 10 per cent rate of return upon the valuation of the property of the water plant and system owned by appellants' and reduced the rates charged by appellants to consumers for water in the town of Miami.

Appellants applied to the District Court of the United States in and for the District of Arizona for injunctive relief upon the following grounds, to-wit:

1. That, under the Constitution and laws of the State of Arizona, the Corporation Commission has no jurisdiction to regulate a utility owned by an *individual* and not owned by an *incorporation*.

2. That the order of the Commission was confiscatory and deprived appellants of their property without due process of law and that the penalties for the enforcement of the order of the Commission amount to confiscation of the prop-

erty of the appellants, for the reason that they claim certain valuations were not allowed by the Commission, in estimating the value of the water plant and system, that should have been allowed, and that, therefore, appellants are not earning an adequate return upon the value of their property and, for said reason, the rates fixed by the Commission, in its opinion and order, are confiscatory.

The United States District Court, on the 11th day of August, 1914, entered its decree and order in this case, from which appellants appealed, alleging five assignments of error.

ARGUMENT UPON THE QUESTION AS TO WHETHER OR NOT THE CORPORATION COMMISSION HAS THE RIGHT TO REGULATE PUBLIC UTILITIES OWNED BY AN INDIVIDUAL

Has the Corporation Commission of the State of Arizona power to prescribe just and reasonable rates and charges to be made and collected by public utilities in the State of Arizona where said public utility is owned by an individual, as well as one owned by an incorporation, in view of Article XV of the Constitution of the State of Arizona and Chapter XI, Title 9 of the Revised Statutes of the State of Arizona, 1913?

This question may be subdivided as follows:

1. May the Corporation Commission of the State of Arizona determine just and reasonable rates to be collected by a public utility owned by an individual under the present laws and Constitution of the State of Arizona, irrespective of further legislative enactment?

2. Is Chapter XI, Title 9 of the Revised Statutes of Arizona, 1913, an enactment which is constitutional in so far as it directly gives the Corporation Commission power to fix just and reasonable rates to be collected by a public utility owned by an individual?

A proper construction and interpretation of Article XV of the Constitution of the State of Arizona gives to the Corporation Commission of the State the power to fix the rates and charges to be collected by a public utility owned and operated by an individual.

The principal sections of said Article XV of the Constitution of the State, applicable to this question are as follows:

> "Article XV. Sec. 2. All corporations other than municipal engaged in carrying persons or property for hire; or in furnishing gas, oil, electricity for light, fuel, or power; or in furnishing water for irrigation, fire protection, or other public purposes; or in furnishing, for profit, hot or cold air or steam for heating or cooling purposes; or in transmitting messages or furnishing public tele-

graph or telephone service, and all corporations other than municipal, operating as common carriers, shall be deemed public service corporations."

"Article XV. Sec. 3. The Corporation Commission shall have power to and shall prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected by public service corporations within the State for services rendered therein."

The determination of the point raised by appellants depends upon the construction and interpretation to be placed upon the words "corporation" and "public service corporation" as used in said Article XV. Are they to be construed in the limited sense, as meaning only incorporated companies, or in a larger sense, as including incorporated association and persons and individuals? Appellants claim that Section 1 of Article XIV of the Constitution is determinative of this question. Said section reads as follows:

"Article XIV. Sec. 1. The term 'corporation,' *as used in this Article*, shall be construed to include all associations and joint stock companies having any powers or privileges of corporations not possessed by individuals or co-partnerships, and all corporations shall have the right to sue and shall be subject to be sued, in all courts, in like cases at natural persons." (Italics are ours.)

Article XIV of the Constitution is entitled

and refers to "Corporations Other Than Municipal" and has no reference to, or connection with, Article XV of the Constitution, entitled and referring to "The Corporation Commission." The framers of the Constitution expressly limited the definition of the word "corporation" contained in Section 1 of Article XIV to said Article, as is evidenced by the use of the words "as used in this Article." If they had intended said definition to apply to the word as used through the Constitution they would have said so, and the fact that they limited the definition of said word to that particular article must be taken as evidence of their intention not to have the same definition apply to the word "corporation" as it appears in the succeeding article, i. e., Article XV. We, therefore, contend and insist that the definition of "corporation" as used in Article XIV, throws no light upon, nor can be considered in the construction and interpretation of the word "corporation" as used in Article XV of the Constitution, or as used in Chapter XI, Title 9, Revised Statutes of Arizona, 1913. As was said by the Supreme Court of Kentucky, in the case of *Commonwealth vs. Adams Express Company*, 123 *Ky.* 720 (97 *S. W.* 386), a constitutional provision that the word "corporation," as used "in the constitution" shall embrace stock companies and associations, does not control the definition of the word "corporation" when used in the statutes of the State. How much more forcible is this rule when the definition of the word is lim-

ited, as it is in our Constitution, to one particular Article.

We are, therefore, compelled to determine the purpose and intention of the framers of the Constitution by the use of the word "corporation" in Article XV without reference to the construction of that word as used in Article XIV of the Constitution.

To determine what definition, construction and interpretation should be placed upon the words "corporation" and "public service corporation," as used in said Article XV of the Constitution, we should be governed by the following elementary principles of constitutional and statutory construction:

(A) *That in such construction and interpretation the reason or spirit of the law will prevail over its letter.*

Hicks vs. Krigbaum (*Ariz.*) (108 *Pac.* 482).

Liebes vs. Steffy, 4 *Ariz.* 11 (32 *Pac.* 261).

36 *Cyc.* 1108.
Commonwealth vs. Adams Express Co., supra.

Parker vs. Nothomb, 60 *L. R. A.* 699.
Territory vs. Clark, 2 *Okla.* 82 (35 *Pac* 882).

James vs. United States Fidelity & Guaranty Co., 117 *S. W.* 406.

United States vs. Kirby, 74 *U. S.* 482.
Ex Parte Mills Sing, 112 *Pac.* 582.

As was said by the Supreme Court of California in the latter case:

> " 'The doctrine of ejusdem generis is but a rule of construction to aid in ascertaining the meaning of the Legislature, and does not warrant a court in confining the operation of a statute within narrower limits than was intended by the law makers.' Black on Interpretation of Laws, p. 143. To give the narrow construction claimed by petitioner would be to say that the Legislature intended to confer a benefit by protecting one class of dependents with whom some one was standing in *loco parentis*, while at the same time those dependents with whom no one stood in such relation should be unprotected. To give the words 'any other person' a broader and more comprehensive interpretation, by saying that it was intended to include all persons committing the acts specified, would make the act applicable to all who are so unfortunate as to be included in the term 'dependent.' "

See, also, Wood vs. Independent School District No. 2, 124 Pac. 780; Pickett vs. United States, 54 L. Ed. 566; Cummings vs. Pence, 91 N. E. 529.

(B) *Every constitutional provision or statute must be construed with reference to the object intended to be accomplished by it.*

If we apply this principle of construction to Article XV of the Constitution, we must say that

by the use of the words "corporation" and "public service corporation" the framers of the Constitution intended to make the provisions of said Article applicable to every individual or association of persons operating a public utility, whether incorporated or not, and the interpretation of said words may be so extended. The object and purpose of Article XV of the Constitution are obvious. It was the plain and apparent intention of the framers of the Constitution to provide for an administrative commission with legislative and judicial powers to regulate public utilities in the State of Arizona and see that equitable and just relations should be maintained between them and their patrons. It was clearly their intention and purpose to provide for a commission which should so regulate the rate and charges to be made and collected for the use of gas, water or electricity when sold to the public, that a fair profit might me enjoyed by the utility selling and disposing of those commodities and yet the public be charged only reasonable rates. The obvious purpose of Article XV of the Constitution was to regulate the sale and business of selling gas, water and electricity and not, particularly, to regulate the owners of the plant which manufactured or distributed said commodities. To construe the words "corporation" and "public service corporation," as used in said Article XV, to mean only incorporated associations and companies would be to defeat the very purpose of the act and lead to an absurd and unjust conclusion and

result. Can it be conceived that, the framers of the Constitution intended that, if two water plants were situated in the same town, one owned by an incorporated company and the other by an individual, both disposing of and selling water to the same community, that, one was subject to regulation by the Corporation Commission as to its rates and the other was not, merely because one might be owned by an incorporated company and the other by an individual.

Most public utilities are owned by incorporated companies but, by the use of the words "corporation" and "public service corporation," it is clear that the framers of the Constitution intended to extend the general meaning of said words to include every owner of a public utility. This is not a new question and has been constantly determined by the courts adversely to the contention of appellants. Montana has a statute which renders *railroad corporations* liable for injuries caused by the negligence of engineers. The act, by its terms is made applicable to *railroad corporations* alone. The Northern Pacific Railroad Company questioned the constitutionality of the act, upon the grounds that, as corporations were only specified by its provisions, it did not afford equal protection of the law. In the case of *Lewis vs. Northern Pacific Railroad Company*, 36 *Mont.* 207, 92 *Pac.* 469, the Supreme Court of Montana, passing upon this point, said:

"Our own statute is susceptible of the

> construction given to the statutes of Iowa, Indiana and Colorado by the courts of those states. The general purpose of it is, as indicated by its title and the character of the provisions embodied in it, to secure the safety of employes, and thus, indirectly of the public. Assuming that the expression 'railway corporation' is used in a general sense, the design being to include all persons engaged in operating railways, it would be free from all objection. And this might be done under the rule of construction that, having ascertained the general purpose, of a statute, to give effect to this general purpose, general words may be restricted to a particular meaning, or those of a restricted meaning may be expanded so as to embrace the general purpose and effectuate it. 2 *Lewis' Sutherland Statutory Construction* 347."

The court held in this case that the word "corporation" should be construed and interpreted to include individuals.

Indiana has a statute which provides that every railroad or other corporation operating in the state shall be liable for injuries suffered by its employees under certain circumstances. The law was contested by the railroad companies upon the same grounds raised in the Montana case, i. e., that it discriminated against a corporation owning a railroad and in favor of an individual owning a railroad. In passing on this point, the Supreme Court of Indiana, in the case of *Pittsburgh C. C. & St. L. Ry. Co. vs. Lightheiser*, reported

in the *78th N. E.* 1033, said, on reading page 1041:

> "Appellant contends, however, that the statute in question violates said constitutional provision, because it only applies to corporations operating railroads, and not to persons engaged in operating railroads. Substantially the same objection was made in the case of *Pittsburgh, etc., Ry. Co. v. Montgomery, supra*, and this court, in that case, citing *Bucklew v. Iowa Central Ry. Co.*, 64 *Iowa* 611, 21 *N. W.* 103, and other cases above cited, held the law valid."

And again the court said, on reading page 1042:

> "True, the employers' liability act of this state provides that "every railroad or other corporation, except municipal, operating in this state shall be liable for damages for personal injuries suffered by any employe," etc. But, in *2 Lewis' Sutherland on Statutory Construction, Paragraph 347*, it is said to be indispensable to a correct understanding of a statute to inquire, first, what is the subject of it—what object it is intended to be accomplished by it. When the subject matter is once clearly ascertained, and its general intent, a key is found to its intricacies. General words may be restrained to it, and those of narrower import may be expanded to embrace it, to effectuate that intent. When that intention can be collected from the statute, words may be modified, altered, or supplied, so as to obviate any repugnancy or inconsistency with such inten-

tion. The subject matter of the statute in question here, and its intent and purpose so far as applicable to railroads, were to protect employes from the peculiar dangers and hazards in railroading. Union, etc., Ry. Co. v. Houlihan, and cases cited supra. Under the decisions cited the character of the employers is not a controlling factor. The statute is to be given at least a reasonable interpretation. One that will carry into effect the legislative intent. As we have shown, the basis of the classification of railroads by themselves was the hazardous and dangerous character of the employment of operating railroads, and this does not depend upon whether railroads are operated by corporations or by one or more persons.

If the character of the employer within the meaning of the statute is not importnat —and the nature of the employment is the test to be appealed in construing—the expression "every railroad or other corporation operating within this state", as applied to railroads, should, under the rule above stated be enlarged and expanded so as to include any person, company, or corporation engaged in operating a railroad in this state."

And again, on reading page 1043:

"The spirit and purpose of the statute must be looked to in interpreting the statute in controversy. As we have seen, the spirit and purpose of the employers' liability act of this state, so far as railroads are concerned, was the protection of employes engaged in the dangerous and hazardous work of operating railroads in this state, and we

> hold that it applies to every corporation, company, co-partnership, or person engaged in the dangerous and hazardous business of operating a railroad, and their employes who are engaged in such dangerous and hazardous work."

The State of Colorado has a law which provides, "That every *railroad corporation* operating its line of road in the state shall be liable for all damages by fire that are caused by operatng said road." The same objection was raised to this law as to the Montana and Indiana law and in determining such point the Supreme Court of Colorado said, in the case of *Union Pacific Railroad Company vs. De Busk*, reported in the *20th Pac. 752 (12 Colo. 204), on reading pages 756* and *757* of the Pacific Reporter, as follows:

> "But no discrimination was either expressed or intended in favor of private individuals, or against railroad corporations, by our statute making them liable for damages by fire caused by the operation of their trains. The object of the statute was to give an adequate remedy to those who should suffer damages from fire caused by the operation of locomotive engines by the dangerous agency of steam. The object of the act was not to punish railroad corporations, but was to declare upon whom the loss must fall in case damage by fire should ensue by the operation of railroads. In the act under consideration the legislature evidently used the words 'railroad corporaton in their popular sense, as denoting any party engaged in the operation of railroads. It was a matter

of common knowledge then, as it has been ever since, and is now, that railroads were operated only through the agency of corporations. Hence, there was in fact no chance for discrimination—no chance to deprive any one of 'the equal protection of the laws'—by declarng a liability against 'railroad corporations' only, since they only were thus engaged in operating railroads.

We have seen that the word 'persons' was held to be comprehensive enough to include corporations, and thus the constitution of California was declared to be in conflict with the Constitution of the Unted States. In passing upon the constitutionality of this act of our territorial legislature, we think the words 'railroad corporations' should be construed to mean any body, company, or association of persons, whether technically incorporated or not, engaged in the operation of railroads. We feel bound to go thus far in construing the language of the act—*First*, for the reason that such was obviously the meaning intended by the legislature: and, *second*, to avoid the necessity of declaring the act unconstitutional. Whenever a word or phrase of an act is used in more senses than one, that sense is always to be preferred which will sustain and give effect to the act, rather than the sense which would render that act unconstitutional and void."

A similar law existed in Iowa and, in the case of *Bucklew vs. Central Iowa Railway Company*, 64 *Iowa* 603 (21 *N. W.* 103), *the court held that* the term "corporation" in the statute should be extended in its meaning to include individuals.

In the case of the *Missouri Pacific Company vs. Mackey*, 127 *U. S.* 205 (32 *L. Ed.* 107), the Supreme Court of the United States held that the word "corporation," as used in the statute should be construed to be comprehensive enough to include the words "person or individual" and, in the case of *Schus vs. Power Sampson Co.*, 85 *Minn.* 447 (89 *N. W.* 68), the Supreme Court of Minnesota held, as the other states, that the expression "railroad corporation" was intended to mean and apply to any railroad, whether owned by a corporation or natural person. It seems to us that the reasoning of the various courts in these cases is applicable to the question raised by appellants here and are conclusive and determinative thereof.

(C) *Statutes should be interpreted according to the intent and meaning of the Legislature; and when words or phrases, if taken literally, would be inconsistent and repugnant, they should receive a liberal interpretation, considering the cause and necessity of the statute, and be made to harmonize, repugnancy avoided and inconsistency reconciled.*

> *New Lamp Chimney Co. vs. Ansonia Brass & Copper Co.*, 91 *U. S.* 656 (23 *L. Ed.* 336).
>
> *Upshur vs. Baltimore*, 94 *Md.* 757; 51 *Atl.* 953.

(D) *When a statutory provision admits of more than one construction that one will be*

adopted which best serves to carry out the purpose of the act.

Bernier vs. Bernier, 147 U. S. 242 (37 L. Ed. 152).

(E) *The courts should avoid a construction which would render a statute ineffective or inefficient, or which would cause grave public injury or even inconvenience, if another and more reasonable interpretation is present in the statute.*

Bird vs. United States, 187 U. S. 118 (47 L. Ed. 100).

(F) *The intention of the Legislature, clearly expressed in a constitutional enactment, should not be defeated by too rigid adherence to the letter of the statute, or by technical rules of construction. Any construction should be disregarded which leads to absurd consequences.*

Oates vs. First National Bank, 100 U. S. 239 (25 L. Ed. 580).

Church of Holy Trinity vs. United States, 143 U. S. 462 (36 L. Ed. 226).

United States vs. Freeman, 3 Howard U. S. 556 (11 L. Ed. 724).

(G) *The meaning of the Legislature may be extended beyond the precise words used in the law, from the reason or motive upon which the Legislature proceeded, from the end in view, or the purpose which was designed; the limitation of the rule being, that to extend the meaning in any case, it must be shown to come within the*

same reason upon which the law makers proceeded, and not merely a like reason.

United States vs. Freeman, supra.

Legislative construction of the constitutional provison was placed upon the words "corporaton" and "public service corporation," as used in Article XV of said Constitution, by the First Legislature of the State of Arizona by Chapter 90 of the Laws of the First State Legislature, as reincorporated in sub-divisions X and Z of paragraph 2278, Revised Statutes of Arizona, 1913, which sub-divisions read as follows:

> Subdivision X: "The term 'water corporation,' when used in this chapter, includes every corporation, or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any water system for compensation within this state."
>
> Sub-division Z: "The term 'public service corporation,' when used in this chapter, includes every common carrier, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, and warehouseman, as these terms are defined in this section and each thereof is hereby declared to be a public service corporation and to be subject to the jurisdiction, control, and regulation of the commission and to the provisions of this chapter."

Such legislative construction is entitled to great weight and consideration.

Missouri, O. & G. Ry. vs. State, 119 *Pac.* 117.

Genessee Chief vs. Fitzhugh, 12 *Howard U. S.* 443 (13 *L. Ed.* 1058).

Bors vs. Preston, 111 *U. S.* 252 (28 *L. Ed.* 419).

R. R. Com. of State vs. Market St. Ry. Co., 64 *Pac.* 1065 (132 *Cal.* 677)

City of Denver vs. Adams County, 77 *Pac* 858 (26 *Colo.* 338).

Coyle vs. Smith, 113 *Pac.* 944 (*Judgment affirmed in* 221 *U. S.* 599, 55 *L. Ed.* 853.)

Cooper Mfg. Co. vs. Ferguson, 113 *U. S.* 727 (28 *L. Ed.* 1137).

State vs. Tingey, 67 *Pac.* 33 (24 *Utah* 225).

Is Chapter XI, Title 9, Revised Statutes of Arizona, 1913, in so far as it gives the Corporation Commission power to regulate and fix charges to be collected by public utilities owned by an individual, constitutional?

Even if it were held that the Constitution, itself, does not give the Corporation Commission power to fix charges and rates to be collected by public utilities owned by an individual, it must be conceded that the Legislature can do so. Section 6 of Artcle XV of the State Constitution reads as follows:

> "The law-making power may enlarge the powers and extend the duties of the Corporation Commission, and may prescribe

rules and regulations to govern proceedings instituted by and before it; but, until such rules and regulations are provided by law, the Commission may make rules and regulations to govern such proceedings."

TITLE TO BILL PASSED BY LEGISLATURE IS SUFFICIENT

It must be conceded that the Legislature, in Chapter XI, Title 9 of the Revised Statutes of Arizona, 1913, has given the Corporation Commission power to fix charges and rates to be collected by public utilities owned by individuals. Appellants, however, claim that Sub-divisions X and Z of paragraph 2278 of said chapter and title, Revised Statutes of Arizona, 1913, granting such powers, embody a subject not contained in the title of the law, which is as follows:

"An Act Relating to Public Service Corporations, Providing for the Regulaton of the Same, Fixing Penalties for a Violation Thereof and Repealing Certain Acts, with an Emergency Clause." (*Chap. 90, Session Laws of Arizona, Regular Session* 1912, *p.* 405).

We see no merit in this contention. The title of the act covers the general subject of the regulation of public service corporations and everything included therein or germane thereto. Sub-divisions X and Z of said paragraph 2278 of the Revised Statutes, 1913, define the meaning to be given to the words "public service corporation," as used in the act, including the mean-

ing of the words as used in the title. This the Legislature had a perfect right to do. The Legislature may define certain words used in the statute, or declare, in the body of the act, the construction to be placed thereon, and the courts are bound by such construction, although otherwise the language would have been construed to mean a different thing. 36 *Cyc.* 1105, 1106.

Snyder vs. Compton, 87 *Texas* 374 (28 *S. W.* 1061.)

Central Kentucky Traction Co. vs. Coombs, 136 *W.* 1045.

Piper vs. Boston M. R. R. Co., 75 *Atl.* 1041.

State vs. American Surety Co., 135 *N. W.* 365.

State vs. Standard Oil Co., 123 *Pac.* 40. *State vs. Harrison*, 116 *Ind.* 300 (19 *N. E.* 146.)

Chicago & E. I. Ry. Co. vs. State, 153 *Ind.* 134 (51 *N. E.* 924).

United States vs. Freeman, *supra.*

Alexander vs. Alexandria, 5 *Cranch* 1 (3 *L. Ed.* 19.)

A constitutional definition of the word "corporation," as used in a constitution does not control the definition of the word "corporation," as used in a statute and as defined by the Legislature.

Commonwealth vs. Adams Express Co., 123 *Ky.* 720; (97 *S. W.* 386).

If, as we have heretofore shown in this brief, the courts have held the word "corporation" to be construed in such a broad sense as to include "individual," where there was no statutory definition so extending its meanng, how much more should the meaning be extended to include "individual" in view of a statutory definition so extending such meaning.

The matters covered by sub-divisions X and Z of said paragraph 2278, Revised Statutes of Arizona, 1913, do not constitute a subject not embraced in the title of the act, but do constitute a definition of words used in the title and body of the act, namely, the words "public service corporations." Applying the rules and statutory construction heretofore cited by us in this brief, as applicable to the constitutional provision, to the statute, we contend that the court should hold that the staute is not objectionable in the particular claimed.

In concluding our argument upon this question, we earnestly contend:

1. That by the provisions of Article XV of the Constitution, the Corporation Commission is granted the power to fix proper rates and charges to be collected by a public utility owned by an individual, as well as one owned by a corporation.

2. That even if such power is not granted by the Constitution itself, it is legally and lawfully granted by a law which is constitutional, namely by said Chapter XI, Title 9 of the Revised Statutes of Arizona, 1913.

We rest our argument on this point, satisfied that such a construction will not be placed on the Constitution of the State of Arizona, or the Statutes referred to, as would practically destroy the effectiveness or usefulness of both and such a construction as would lead to an unjust discrimination as between a public utility owned by a corporation and a public utility owned by an individual.

FEDERAL QUESTION RAISED BY APPELLANTS.

The main Federal question raised by appellants is the contention that the order of the Corporation Commission complained of is confiscatory, in that it does not afford an adequate rate of return upon the property used and useful in the maintenance and operation of the utility owned by them. It is our contention that neither by the Bill of Complaint, or by the supporting affidavits filed in the court below were sufficient grounds in equity shown to justify the court granting appellants injunctive relief, as prayed for.

The Bill of Complaint filed in the court below did not state facts sufficient to justify the relief prayed for.

As we shall point out later in our brief, the presumption of law is that the order of the Corporation Commission is a valid one and that the rates fixed by it are compensatory and the burden of proof was upon appellants to overcome this

presumption. Such being the case, appellants must not only have proven but also must have alleged facts sufficient to overcome this presumption. Especially is this true in considering a motion where the Bill of Complaint is considered evidence in determining said motion.

> "In equity a party cannot succeed upon a case proved but not alleged any more than upon a case alleged but not proved." *Foster vs. Goddard*, 1 *Black* 506, 17 *L. Ed.* 228; *Grosholz vs. Newman*, 2 *Wall.* 481, 22 *L. Ed.* 471.

It is an elementary principle that a bill of equity must contain more than allegations, which are merely inferences or conclusions of law. Such ultimate facts must be set forth in the Bill of Complaint as will clearly show that the order complained of is confiscatory.

The allegations setting up the claim that the order of the Commission complained of is confiscatory will be found in paragraph 5 of compalinants' bill of complaint. We contend seriously that they are totally insufficient to have justified the court below granting injunctive relief as prayed for and that said paragraph contains mere inferences and conclusions of law in this.

1. The Bill of Complaint failed to show what was the value of appellants' property upon which the rate of return should be based.

2. The Bill of Complaint failed to show what were the operating expenses incurred in operating the utility owned by appellants.

3. The Bill of Complaint failed to show what was the net income, or what would be the rate of return under the old rates charged and what would be the rate of return under the new rates if the order of the Commission became effective.

4. The Bill of Complaint did not attack the order of the Commission upon the ground of confiscation, except in the following particulars, i.e., the alleged neglect of the Commission to include in the value of the utility the value of 240 acres of land, one well, one pumping plant and one spur track, and yet the Bill of Complaint failed to allege:

(a) That said land was owned by appellants or that said land was necessarily used or useful for the purpose of maintaining or operating said utility, or the value of said land for water purposes.

(b) The Bill of Complaint failed to allege that the well omitted belonged to appellants, or that it was necessarily used or useful in the maintenance and operation of the utility.

(c) The Bill of Complaint failed to allege that the water right, for which a value was claimed, was the property of appellants, or that it was necessarily used or useful for the maintenance and operation of the utility.

(d) The same objection appiles to the allegation relative to the pumping plant and spur.

A Bill of Complaint much more comprehensive than the one in the case at bar was held insuffi-

cient in a late case decided by the Supreme Court of the United States. *See Southern Pacific vs. Campbell, 230 U. S. 537 (57 L. Ed. 1610).*

For these reasons the application of appellants for injunctive relief was properly denied.

ARGUMENT OF FACTS.

It appears from the affidavits of William Sangster, W. P. Geary, Chairman of the Corporation Commission, and G. P. Bullard, Attorney General, that at the hearing had before the Commission, appelants refused to introduce or produce any evidence or information showing any part of the value of their plant, or showing that the so-called water shed was property used or useful for the purposes of the water plant, or for what reason a value should be allowed therefor. No mention was made at said hearing of any water right owned by appellants or the value thereof, or in what manner or what purpose any water right was property used or useful in the operation and maintenance of said water utility. To say that after having sat silent at said hearing and then be allowed to go into court and ask for injunctive relief against the order of the Commission would be to stretch the rule of equity and would result in inequity instead of equity. *"Equity aids the vigilant and not those who slumber upon their rights." He who comes into equity must come with clean hands."*

Where it was shown that appellants, at the

hearing before the Commission, failed to offer evidence as to values, afterwards claimed by them, and refused to offer any evidence at all, we say that they were not vigilant and did slumber upon their rights and they do not come into equity with clean hands.

VALUATION OF LAND CLAIMED BY COMPLAINANTS.

Miami is a mining town, situated in the mountains in Gila County, Arizona, with a population of 3,000 to 5,000 souls. The water system of appellants is situated in a gulch or wash near the townsite of Miami and running by the side of said gulch or wash are some small foothills, and extending beyond the foothills are the Pinal Mountains, which are barren and not susceptible of irrigation, but contain some mineral and are useful for no purpose other than mining or for maintaining goat or chicken ranches, or for townsite purposes. Further description of these foothills, and the topography of the country surrounding the gulch or wash upon which the water system of complainants is situated, will be found in the affidivait of Expert Ferguson.

The so-called water shed, for which a valuation is claimed by appellants, consists of a number of barren foothills approximating 240 acres, owned by appellants through mining locations and the acquisition of patented mining claims. The water supply of appellants is derived solely

from wells and not from springs or streams and no water is stored by them. No testimony was offered at the bearing before the Commission by appellants of the value of the so-called water shed. One witness before the Commission, H. M. Brown, a real estate agent, stated that $50.00 per acre would be a liberal appraisement of the market value for all purposes of the lands contained in appellants so-called water shed. J. J. Mackey, a real estate owner and experienced in the value of real estate in Miami, himself the owner of a water plant, testified before the Commission that the washes and draws in the foothills composing the so-called water shed of appellants was worth about $75.00 per acre for water purposes, and that the remainder of said foothills are of practically no value for water shed or other water purposes. It did not appear from the evidence before the Commission the extent of the acreage of said draws and washes of said foothills owned by appellant. Mr. Mackey estimated that the acreage in the Van Dyke holdings, useful for water purposes, did not exceed forty acres. (See affidavit of George P. Bullard).

Allowances in value have been made by courts and commissions to water companies, where the water was stored and the water storage fed by streams and springs, for lands held for water shed purposes, but we cannot recall a single case where such an allowance has been made where the water distributed by the water utility was obtained solely by pumping from wells. In the

case of the plant owned by appellants the water would reach the wells of appellants just the same whether the foothills were owned by appellants or not. In fact, the evidence before the Commission showed that right in the center of appellants' so-called water shed is a large tract of land owned by Mr. Mackey, who was operating a water plant of his own. (See affidavits of W. P. Geary and Expert Ferguson). The original source of the water which eventually found its way to appellants' wells was in the Pinal Mountains and springs located upon lands not owned by the Van Dykes. The Pinal Mountains are not owned by appellants or any other person. To say that because some of the water which percolates into the wells of appellants runs down or seeps through the gullies and washes into the ground of the foothills owned by appellants, the consumers of appellants should have to pay a rate of return upon the value of said foothills would be to argue an absurdity. That the foothills were not purchased to prevent contamination of the wells clearly appears from the affidavits of Geary and Ferguson. An allowance was made to appellants of the value of ten acres of land for uses necessary and useful to the maintenance of the plant. (See affidavits of Geary and Expert Ferguson).

It appears from the affidavit of Geary, on file herein, that the water furnished to the City of Phoenix, Arizona, containing approximately 25,000 souls, is pumped from wells and yet all the land owned by the City of Phoenix, used and

useful for the purpose of its water supply, is not to exceed four acres. It would be just as reasonable to say that the City of Phoenix would have to acquire and own all the surrounding country and the hills surrounding the Salt River Valley to protect its water supply as to say that the ownership of these foothills is necessary in the operation of the plant of appellants. Said foothills were acquired by appellants for mineral, townsite and other speculative purposes and should not be included in the valuation of appellants' utility for rate making purposes. Appellants' claim, as the value of these barren foothills, the ridiculous amount of $160.00 per acre. Even where it has been recognized that a value should be allowed to the water utility for land held for water shed purposes, it has been held that the value of said land for rate making purposes is not its market value, but its value only for water purposes.

It was said in the case of *Spring Valley Water Company vs. City of San Francisco*, reported in 102*nd Fed.* 137, reading page 158:

> "The value of property is the value of its uses. If but half complainant's land is used, a return on that half only should be exacted. The value of that half would be the reasonable value of the property in use. If complainant's land is susceptible of two equally advantageous uses, each of which may be exercised without detriment to the other, and only one of them is taken for the public, half the value of the property again would be the reasonable value of the

> property in use. When watershed lands are used for grain raising, under proper resctrictions, neither use materially interferes with the other. So, also, lands may be employed at the same time both for water production and water storage. Neither use excludes the other."

Then, again, on reading page 160:

> "I cannot recede from the position taken in the 1908 case: If the company voluntarily devotes to the mere catchment of water lands which are much more valuable for other purposes, it is unreasonable, in fixing rates ,to appraise such lands for more than they are worth as watershed areas. *Spring Valley Water Co. v. San Francisco* (C. C.), 165 *Fed.* 667, 698."

The Commission considered that there was not sufficient testimony presented before it to show the necessity of the acquisition of these foothills by appellants for purposes used and useful for appellants' water plant, but even if it should be considered that the acquisition of said foothills, or the so-called water shed, was necessary for the operation and maintenance of appellants' utility, placing the value of the same at the value fixed by Mr. Brown as the market value, for all purposes, at $50.00 per acre for every foot of said water shed, would only result in an additional value of $12,000.00 to the valuation fixed upon appellants' water utility by the Commission and the net return, estimated by virtue of the new rates, as found by the Commission, to wit: $4,010.50, would result in nearly an eight per

cent rate of return on the value of the property of the utility, as found by the Commission, plus the entire value for all purposes of the entire so-called water shed of 240 acres, estimated at said $50.00 per acre. Such a rate could hardly be held, as a matter of law, to be confiscatory. We contend seriously that no valuation should be allowed to these fothills contained in the so-called water shed for the purpose of rate making, but, even if a proper valuation should be allowed for the same, the application of the net income to said valuation would not result upon a rate of return so low that a court could say that the property of appellants was confiscated.

THE WATER RIGHT VALUATION OF $20,000.00.

We can scarcely believe that appellants' will seriously contend for this valuation set forth in their bill of complaint, in view of the fact that no water is drawn from any running stream or spring to supply the water distributed by appellants' plant. We know no law in Arizona whereby a water right can be predicated upon the sinking of a well, especially where said well does not tap any subterranean stream. The water in appellants' wells is percolating water and not running water, and therefore not subject to appropriation. Certainly there was no evidence before the Commission, or before the court below, showing that any water right was owned by appellants which is necessarily used or useful for the

purpose of operating and maintaining the utility owned by them.

VALUE FOR WELL CLAIMED BY APPELLANTS IN THEIR BILL OF COMPLAINT $2,000 IN COURT BELOW.

The reason for the disallowance of this item is explained in the affidavits of Commissioner Geary and Expert Ferguson, on file herein. The well was not constructed at the time of the hearing and there is no evidence that it is constructed at this date. No permission, as is required by law, has been asked for, or obtained from the Corporation Commission to make this addition to the plant. If said well is necessary in the operation and maintenance of the water utility owned by appellants, the proper procedure, under the law, is for appellants to apply to the Commission to be allowed to construct the same and, if such permission is granted, the Commission will add the valuation thereof to the valuation of the utility and adjust the rates accordingly if an adjustment becomes necessary because of said added valuation.

VALUE OF MAIN PUMPING PLANT $3,000.00.

Mr. Ferguson explains in his affidavit the reason for the disallowance of this item. Appellants, in addition to owning a water utility in the Town of Miami, own, also, a telephone system and an

electric light plant. The electric light plant is used by appellant to furnish, distribute and sell electricity to the inhabitants of Miami. This value claimed by appellants, as explained by Mr. Ferguson in his affidavit, properly belongs to the electric utility which may be entitled to charge for the power furnished to the water utility for the purpose of pumping its water; but no part of said value of said electrical apparatus used to generate electricity for the electric light plant should be charged to the water utility for the purpose of rate-making.

VALUE OF SPUR TRACK.

An examination of the affidavit of Expert Ferguson shows that proper allowance was made for that portion of the value of the spur track which should be properly allocated to the water utility, the spur track being used for other purposes than for purposes used and useful for the water utility, and appellants are mistaken when they say that no account was made by the Commission for this valuation.

VALUATION PLACED UPON THE UTILITY BY THE COMMISSION WAS A FAIR AND LIBERAL ONE.

It will be observed by an examination of the affidavits of Commissioner Geary and of the affidavits of Expert Ferguson, and of the order of the Commission made as an exhibit and attached

to appellants' bill of complaint, that the Commission was extremely fair and liberal in fixing the valuation of the water utility owned by appellants.

In view of the prior decision of the U. S. District court, in the Pacific Gas & Electric Company case, they increased the percentage allowed for overhead charges from 12 per cent to 14 per cent; they also made an allowance for going value, though no evidence was offered by the utility of any such value. The Commission had extreme consideration for the views of the court, as expressed in the Pacific Gas & Electric Company case, and endeavored to carry out those views in their judgment, determination and opinion in the case at bar.

Appellants have no cause of complaint of the valuation fixed by the Corporation Commission on the property necessarily used and useful for the purposes of operating and maintaining the water utility owned by appellants and, as a matter of fact, they do not so complain, except in so far as they complain of the Commission's failing to make an allowance of value for the lands owned by appellants included in appellants' so-called water shed and in the other minor particulars hereinbefore set forth in this brief.

RATE OF RETURN

Appellants admit by their bill of complaint that their gross income for the year ending May 1st, 1914, under the old rates, was $26,507.15. They do not claim that this gross income would

be reduced by the new rates by a sum to exceed $10,000.00 in any one year. Assuming such to be a fact, deducting said $10,000.00 from the gross income, they would obtain a gross income, under the new rates, for the year ending May 1st, 1914, of $16, 507.15. The uncontradicted testimony of Mr. Sangster, as set forth in his affidavit, is that the operating expenses of the utility amounted to the sum of $8,920.00 per year. (See affidavit of Sangster.) Deduct this sum from the gross income derived under the new rates, i. e., $16,507.15, and we have left in net income, for the year ending May 1st, 1914, under the new rate fixed by the Commission, of $7,687.15, which net income covers a depreciation fund and a rate of return on the valuation of the property. This net income amounts to a rate of 10 per cent on $76,871.50 and over a 12 per cent rate of return on $60,000.00. Assuming, for the sake of argument, that an allowance should be made of the value of even $75.00 per acre on the 240 acres of land claimed by appellants for water shed purposes, this would amount to the sum of $18,000. Add this to the valuation allowed by the Commission of $40,105.00 and we have the valuation of the water utility, including an exorbitant valuation of the water shed, the sum of $58,105.00, or $1,895.00 less than $60,000.00, and yet, as we have heretofore shown, under the new rates, the net income for the year 1914, would amount to a rate of return of over 12 per cent on $60,000.00, or approximately a 9 per cent rate of return after allowing for a depreciation fund of 3 1-2 per cent.

An allowance of a depreciation fund of 3 1-2 per cent is extremely liberal in the case of a water utility. We have thus demonstrated that, even if appellants' contention for a value for the water shed be allowed to an extent, which we contend is clearly unreasonable, still the rates fixed by the order of the Commission will yield a 9 per cent rate of return over operating expenses and depreciation reserve. Can any court reasonably say that such a rate of return amounts to confiscation, when the legal rate of interest in Arizona is only 6 per cent? (See affidavit of G. P. Bullard.

As was said by the Supreme Court of the United States, in the case of *City of Knoxville vs. Knoxville Water Company*, 212 U. S., page 1 (53 L. Ed. 371), *reading page* 17:

> "It cannot be doubted that, in a clear case of confiscation, it is the right and duty of the court to annul the law. Thus, in Reagan v. Farmers' Loan & T. Co., 154 U. S. 362, 38 L. Ed. 1014, 4 Inters Com. Rep. 560, 14 Sup. Ct. Rep. 1047, where the property was worth more than its capitalization, and, upon the admitted facts, the rates prescribed would not pay one-half the interest on the bonded debt; in Covington & L. Turnp. Road Co. v. Sandford, 164 U. S. 578, 41 L. Ed. 560, 17 Sup. Ct. Rep. 198, where the rates prescribed would not even pay operating expenses; in Smyth v. Ames, 169 U. S. 466, 42 L. Ed. 819, 18 Sup. Ct. Rep. 418, where the rates prescribed left substantially nothing over operating expenses and cost of service; and in Ex parte Young, supra, where, on the aspect of the case which was before

the court, it was not disputed that the rates prescribed were in fact confiscatory, injunctions were severally sustained. But the case before us is not a case of this kind. Upon any aspect of the evidence, the company is certain to obtain a substantial net revenue under the operation of the ordinance. The net income, in any event, would be substantially 6 per cent, or 4 per cent after an allowance of 2 per cent for depreciation. See Stanislaus County v. San Joaquin & K. River Canal & Irrig. Co., 192 U. S. 201, 48 L. Ed. 406, 24 Sup. Ct. Rep. 241. We cannot know clearly that the revenue would not much exceed that return. We do not feel called upon to determine whether a demonstrated reduction of income to that point would or would not amount to confiscation.

Where the case rests, as it does here, not upon observation of the actual operation under the ordinance, but upon speculation as to its effects, based upon the operations of a prior fiscal year, we will not guess whether the substantial return certain to be earned would lack something of the return which would save the effect of the ordinance from confiscation. It is enough that the whole case leaves us in grave doubt."

As we shall argue later in this brief, the presumption is that a reduction in the rates will result in a still greater income to appellants because of the increased consumption of water, than would result from the same business for the year ending May 1st, 1914, under the old rates.

It is not the province of a court to make rates. The court cannot disturb the determination of

the Corporation Commission, as to the reasonableness of the rate fixed by them, unless it can at the same time, say that the rate of return afforded under the rates fixed by the Commission is so low as to practically result in confiscation. There was no such showing on the part of appellants in this case.

"Unreasonable," as used by courts in passing on reasonableness of rates fixed by legislative authority means confiscation.

San Diego Land & Town Co. v. National City, 174 *U. S.* 739, 43 *L. Ed.* 1154, 19 *Sup. Ct. Rep.* 804; *Spring Valley Waterworks v. San Francisco*, 82 *Cal.* 286, 6 *L. R. A.* 756, 16 *Am. St. Rep.* 116, 22 *Pac.* 910, 1046; *Knoxville v. Knoxville Water Co.*, 212 *U. S.* 1, 53 *L. Ed.* 371, 29 *Sup. Ct. Rep.* 148; *Willcox v. Consolidated Gas Co.*, 212 *U. S.* 19, 53 *L. Ed.* 382, 29 *Sup. Ct. Rep.* 192, 15 *Ann. Cas.* 1034; *Noyes, Am. R. rates p.* 250.

The only inquiry open to the courts is whether the order was regularly made and duly served, and whether any constitutional rights have been violated. In other words, Are the rates fixed confiscatory? Has the Commission, under the guise of regulation, acted so arbitrarily as to abuse its discretion, or otherwise acted beyond the scope of its authority? The power, and not the mere expediency of its exercise, is the question. Upon the reasonableness and justice of a rate it may be said the determinations of facts by the Commission are conclusive.

Interstate Commerce Commission v. Illinois C. R. Co., 215 *U. S.* 452, 54 *L. Ed.* 280, 30 *Sup. Ct. Rep.* 155; *Baltimore & O. R. Co. v. United States*, 215 *U. S.* 481, 54 *L. Ed.* 292; 30 *Sup. Ct. Rep.* 164; *Southern P. Co. v. Interstate Commerce Commission*, 219 *U. S.* 433, 55 *L. Ed.* 283, 31 *Sup. Ct. Rep.* 288; *Interstate Commerce Commission v. Delaware, L. & W. R. Co.*, 220 *U. S.* 235, 55 *L. Ed.* 448, 31 *Sup. Rep.* 392; *Interstate Commerce Commission v. Chicago, R. I. & P. R. Co.*, 218 *U. S.* 88, 110, 54 *L. Ed.* 946, 957, 30 *Sup. Ct. Rep.* 651; *Monongahela Bridge Co. v. United States*, 216 *U. S.* 177, 54 *L. Ed.* 435, 30 *Sup Ct. Rep.* 356.

POINTS OF LAW TO BE CONSIDERED BY THE COURT IN DETERMINING AS TO WHETHER AN INTERLOCUTORY INJUNCTION SHOULD OR NOT HAVE BEEN GRANTED HEREIN.

"A state may require of a public utility a certain service to be performed at a rate, which, though affording a large margin over expense of operation, does not pay its full share toward profit on capital, and may even require certain services to be rendered at a loss, provided the utility is left, on the whole, with a fair profit." *Ruggles vs. Illinois*, 108 *U. S.* 526, 538, 27 *L. Ed.* 812, 817, 2 *Sup. Ct. Rep.* 832; *St. Louis & S. S. R. R. Co. vs. Gill*, 156 *U. S.* 649, 665, 666, 39 *L. Ed.* 567, 573, 15 *Sup. Ct. Rep.* 484; *Smyth vs. Ames*, 169 *U. S.* 466, 541, 42 *L. Ed.* 819, 847,

18 *Sup. Ct. Rep.* 418; *San Diego Land & Town Co. vs. National City*, 174 *U. S.* 739, 760, 43 *L. Ed.* 1154, 1162, 19 *Sup. Ct. Rep.* 804; *Minneapolis & St. L. R. Co. vs. Minnesota*, 186 *U. S.* 257, 46 *L. Ed.* 1151, 22 *Sup. Ct. Rep.* 900; *Atlantic Coast Line R. Co. vs. North Carolina Corp. Commission*, 206 *U. S.* 1, 51 *L. Ed.* 993, 27 *Sup. Ct. Rep.* 585, 11 *A. & E. Ann. Cas.* 398.

The presumption is that the rates fixed by the Commission are reasonable, and the valuation fixed by them is correct.

Minneapolis & St. L. R. Co. vs. Minnesota, 186 *U. S.* 257-264, 46 *L. Ed.* 1151-1156, 22 *Sup. Ct. Rep.* 900; *Dow vs. Beidleman*, 125 *U. S.* 680, 31 *L. Ed.* 841, 2 *Inter. Com. Rep.* 56, 8 *Sup. Ct. Rep.* 1028; *Chicago, M. & S. P. R. Co. vs. Tompkins*, 176 *U. S.* 167, 172, 173, 44 *L. Ed.* 417, 420, 20 *Sup. Ct. Rep.* 336; *San Diego Land & Town Co. vs. National City*, 174 *U. S.* 753, 755, 43 *L. Ed.* 1159, 1160, 19 *Sup. Ct. Rep.* 804.

Unless this presumption is overcome by the clearest and most convincing testimony, the application for an interlocutory injunction was properly denied. *Knoxville vs. Knoxville Water Co.* 212 *U. S.* 1, *text pages* 8, 16, 17. As was said by the court in this case on page 16:

> "The jurisdiction which is invoked here ought, as has been said, to be exercised only in the clearest cases. If a company of this kind chooses to decline to observe an ordinance of this nature and prefers rather to go into the court with the claim that the ordinance is unconstitutional, it must be prepared

to show to the satisfaction of the court that the ordinance would necessarily be so confiscatory in its effect, as to violate the Constitution of the United States." And again on the same page: "Judicial interference should never occur unless the case presents clearly and beyond all doubt such a flagrant attack upon the rights of property under a guise of regulation as to compel the court to say that the rates prescribed will necessarily have the effect to deny just compensation for private property taken for public use."

See also *San Diego Land & Town Co. vs. National City*, 174 *U. S.* 739, 754, 43 *L. Ed.* 1154.

> "In a case like this we do not feel bound to re-examine and weigh all the evidence, although we have done so, or to proceed according to our independent opinion as to what were proper rates. It is enough if we cannot say *that it was impossible for a fair minded board to come to the result which was reached.*" *San Diego Land & Town Co. vs. Jasper*, 189 *U. S.* 439, 47 *L. Ed.* 892.

The burden of proof is on appellants, and is so strong that it must show that the state authorities could not fair mindedly have come to the result which was reached.

United States vs. Gettysburg Electric R. Co., 160 *U. S.* 668, 680, 40 *L. Ed.* 576, 580 16 *Sup. Ct. Rep.* 427; *Sweet vs. Rechel*, 159 *U. S.* 380, 40 *L. Ed.* 188, 16 *Sup. Ct. Rep.* 43; *Talbot vs. Hudson*, 16 *Gray* 417; *Re Wellington*, 16 *Pick.* 96, 26 *Am. Dec.* 631; *Illinois C. R. Co. vs. Interstate Commerce Commission*, 206 *U. S.* 441, 445, 51 *L. Ed.* 1128, 1133, 27 *Sup. Ct. Rep.* 700; *San Diego*

Land & Town Co. vs. National City, 174 *U. S.* 739, 754, 43 *L. Ed.* 1154, 1160, 19 *Sup. Ct. Rep.* 804; *Chicago M. & St. P. R. Co. vs. Tompkins*, 176 *U. S.* 167, 173, 44 *L. Ed.* 417, 420, 20 *Sup. Ct. Rep.* 336; *San Diego Land & Town Co. vs. Jasper*, 189 *U. S.* 439, 441, 442, 47 *L. Ed.* 892, 894, 895, 23 *Sup. Ct. Rep.* 571.

The principles of law above quoted are peculiarly applicable when the rates fixed by the Commission have not been tried, and the result of their establishment ascertained.

As was said by the Supreme Court of the United States in the case of *Wilcox Consolidated Gas Co.*, 212 *U. S.*, *page* 19, (53 *L. Ed. page* 382), *text pages* 41 *and* 42:

> "The case must be a clear one before the courts ought to be asked to interfere with state legislation upon the subject of rates, especially before there has been any actual experience of the practical result of such rates. In this case, the rates have not been enforced as yet, because the bill herein was filed and an injunction obtained restraining their enforcement before they came into actual operation:"

And again by the same court, text page 42 of the decision:

> "But where the rate complained of shows in any event a very narrow line of division between possible confiscation and proper regulation *as based upon the value of the property found by the Court below*, and the dividends upon opinions as to value which differ considerably among the witnesses, and

> also upon the results in the future of operating under the rate objected to, so that the material fact of value is left in much doubt, a court of equity ought not to interfere by injunction *before a fair trial has been made of continuing the business under that rate and thus eliminating as far as is possible the doubt arising from opinions as opposed to facts.*"

The probabilities are, that if the reduced rates fixed by the Commission were given an actual trial, the result would be increased earnings. See *Wilcox vs. Consolidated Gas Co., supra.* Also from the same opinion of the court in said *Wilcox vs. Consolidated Gas Co., supra,* we find the following, *text page 51 of the decision:*

> "In this case, a slight reduction in the estimated value of the real estate plants and mains would give a 6 per cent return upon the total value of the property above stated, and again, increased consumption at the lower rate might result in increased earnings, as the cost of furnishing the gas would not increase in proportion to the increased amount of gas furnished * * *." "But it is equally true that a reduction in rates will not always reduce the net earnings, but on the contrary, may increase it. The question of how much an increased consumption under a less rate will increase the earnings of complainants, if at all, at a cost not proportionate to the former cost, can be answered only by a practical test. In such a case as this, where the other data upon which the computation of the rate of return must be based, are from the evidence, so uncertain,

> and where the margin between possible confiscation and valid regulation is so narrow, we cannot say there is no fair or just doubt about the truth of the allegation that the rates are insufficient."

This is true of all gas, electric or water companies. See *R. R. Commission vs. Cumberland Telephone & Telegraph Co.*, 212 *U. S.* 414, *text page* 426, 53 *L. Ed.* 517; *Chicago & G. T. R. Co. vs. Willman*, 143 *U. S.* 339, 36 *L. Ed.* 176. This doctrine is especially applicable in the case at bar.

An examination of the decisions rendered in the Federal courts, original and appellate, will show that they rarely exercise their power and jurisdiction to interfere with rates for public utility companies fixed by a legislative body.

The following are the only cases which have come under our observation:

Reagon vs. Farmers' Loan & T. Co., 154 *U. S.* 362, 38 *L. Ed.* 1014, 4 *Inters. Com. Rep.* 560, 14 *Sup. Ct. Rep.* 1047; *Covington & L. Turnp. Road Co. vs. Sanford*, 164 *U. S.* 578, 41 *L. Ed.* 560, 17 *Sup. Ct. Rep.* 198; *Smyth vs. Ames*, 169 *U. S.* 466, 42 *L. Ed.* 819, 18 *Sup. Ct. Rep.* 418.

On the other hand, said courts in the following cases have refused to interfere with the rates fixed by such legislative bodies for public utilities:

San Diego Land & Town Co. vs. National City, 174 *U. S.* 739, 43 *L. Ed.* 1154, 19 *Sup. Ct. Rep.* 804; *Chicago & G. T. R. R. Co. vs. Wellman*, 143

U. S. 339, 36 *L. Ed.* 176, 12 *Sup. Ct. Rep.* 400; *Atty. Gen. vs. Chicago & N. W. R. Co.*, 35 *Wis.* 583; *Stanislaus County vs. San Joaquin & Silver Canal & Irrig. Co.*, 192 *U. S.* 201, 48 *L. Ed.* 406, 24 *Sup. Ct. Rep.* 241; *Dow vs. Beidleman*, 125 *U. S.* 680, 31 *L. Ed.* 841, 2 *Inters. Com. Rep.* 56, 8 *Sup. Ct. Rep.* 1028; *St. Louis & S. F. R. Co. vs. Gill*, 156 *U. S.* 649, 39 *L. Ed.* 567, 15 *Sup. Ct. Rep.* 484; *San Diego Land & Town Co. vs. Jasper*, 189 *U. S.* 439, 47 *L. Ed.* 892, 23 *Sup. Ct. Rep.* 571; *Minneapolis & St. L. R. Co. vs. Minnesota*, 186 *U. S.* 257, 46 *L. Ed.* 1151, 22 *Sup. Ct. Rep.* 900; *Atlantic Coast R. Co. vs. Florida*, 203 *U. S.* 256, 51 *L. Ed.* 174, 27 *Sup. Ct. Rep.* 108; *Seaboard Air Line R. Co., vs. Florida*, 203 *U. S.* 261, 51 *L. Ed.* 175, 27 *Sup. Ct. Rep.* 109; *Alabama & V. R. Co. vs. Mississippi R. Commission*, 203 *U. S.* 496, 51 *L. Ed.* 289, 27 *Sup. Ct. Rep.* 103.

See also *Knoxville vs. Knoxville Water Co., supra*; *Wilcox vs. Consolidated Gas Co., supra.*

They are reluctant to interfere with such rates, even when the same are fixed by statute or ordinance, where comparatively little investigation is had. How much more reluctant should they be in a case where the rate is fixed (as it was in this case) by a Commission after a lengthy and exhaustive investigation and hearing.

It is a significant fact that in the case of *ex parte Young*, 209 *U. S.* 123, 52 *L. Ed.* 714 *which* did not deal with a public utility, but with a carrier where one rate was fixed by statute and an-

other rate was fixed by a Commission, and both were assailed), while the District court granted an interlocutory injunction as to the rate fixed by statute, it refused to do so as to the rate fixed by the Commission.

We contend that in this case, instead of applying to the District court, the appellants should have apealed from the decision of the Corporation Commission to the State courts under the rule laid down in *Prentis vs. Atlantic Coast Line R. Co.*, 211 *U. S.* 210, 53 *L. Ed.* 150.

Appellants' reply to this contention that the operation of the order of the Commission could not be stayed in the State courts, and that in case of such appeal they would have been forced to put in operation the rate fixed by the Commission. For the sake of argument, conceding this to be true, such a course of procedure would have been equitable, and is the identical one approved in particular by the Supreme Court of the United States in the cases hereinbefore cited, where they declare that the rate should be put in operation and tested before a court interferes.

> "The power to enjoin being discretionary, the court has the right to place any proper condition upon its exercise. What condition can be more proper than to say to the complainant: 'It is discretionary with us to remit you to the state tribunal. It is discretionary with us to remit you to a trial at law. As a condition of coming into equity and having your case tried by the Federal

procedure, you must do equity by charging no higher sum than is found by that procedure to be constitutional."

1 *Pom Eq. Jur. Pars.* 385, 386, 389-393; *De Walsh vs. Braman*, 160 *Ill.* 415, 43 *N. E.* 597; *Veazie vs. Williams*, 8 *How.* 134, 161, 12 *L. Ed.* 1018, 1029; *Willard vs. Tayloe*, 8 *Wall.* 557, 567, 569, 19 *L. Ed.* 501, 504; *People's National Bank vs. Marye*, 191 *U. S.* 272, 281, 285, 48 *L. Ed.* 180, 185, 187, 24 *Sup. Ct. Rep.* 68; *Parmley vs. St. Louis, I. M. & S. R. Co.*, 3 *Dill.* 34, *Fed. Cas. No.* 10,768; *Farmers' Loan & T. Co. vs. Denver L. & G. R. Co., C. C. A.* 588, 126 *Fed.* 46; *Thomas vs. Evans*, 105 *N. Y.* 615, 12 *N. E.* 571; *Fanning vs. Dunham*, 5 *Johns. Ch.* 142; *Stanley vs. Gadsby*, 10 *Pet.* 521, 9 *L. Ed.* 518; *Tiffany vs. Boatman's Sav. Inst.*, 18 *Wall.* 375, 385, 21 *L. Ed.* 868, 870; *Knoth vs. Manhattan R. Co.*, 109 *App. Div.* 807 96 *N. Y. Supp.*, 844, *affirmed in* 187 *N. Y.* 243, 79 *N. E.* 1015.

Rates will not be interfered with by courts if there is room for difference of intelligent opinions as to their reasonableness, and they will, in such case, be left to the test of actual experiment.

Pensacola & A. R. Co. vs. State, 25 *Fla.* 310, 3 *L. R. A.* 661, 2 *Interc. Com. Rep.* 522, 5 *So.* 833; *Chicago, B. & Q. R. Co. vs. Dey*, 38 *Fed.* 657; *Tilley vs. Savannah, F. & W. R. Co.*, 4 *Woods* 427, 5 *Fed.* 662.

RATES WILL NOT BE INTERFERED WITH BY COURTS IF THERE IS ROOM FOR DIFFERENCE OF INTELLIGENT OPINION AS TO THEIR REASONABLENESS AND THEY WILL, IN SUCH CASE BE LEFT TO THE TEST OF ACTUAL EXPERIMENT,

It may be claimed that the rule announced in the case of *Knoxville vs. Knoxville Water Company* and in the case of *Wilcox vs. Consolidated Gas Company*, and the cases hereinbefore cited, is not applicable in the determination of an application for a temporary injunction. The same line of reasoning applies in determining the question as to whether or not a temporary injunction should be granted as does in determining whether a permanent injunction should be granted. In the case of *Pensacola & A. R. Co. vs. State*, 25 *Fla.* 310, 3 *L. R. A.* 661, the court refused to grant a preliminary injunction for the reason that the mind of the court, from the conflicting testimony submitted on the application therefor, was left in doubt and it was determined that the rates should first be tested before a preliminary injunction should issue.

In the case of *Tilley vs. Savannah F. & W. R. Co.*, 5th *Federal* 662, text page, the decision of the court was on an application for an injunction *pendente lite*:

> "The officers of the railroad company declare that the rates fixed by the commission will so reduce its income that it will not

> suffiice to pay the running expense of the road and the interest on its bonded debt, leaving nothing for dividends to its stockholders. The railroad commissioners assert that their schedule was framed to produce 8 per cent income on the value of the road after paying cost of maintenance and running expenses. Which view is the correct one, it is impossible to decide from the evidence submitted. There is, however, a conclusive way, and it seems to me it is the only one, by which this controversy can be settled, and that is by experiment. A reduction of railroad charges is not always followed by a reduction of either gross or net income. It can soon be settled which is right—the railroad company's officers or the railroad commission—in their view of the effect of the commission's tariff of rates, by allowing the tariff to go into operation. If it turns out that the views of the railroad company are correct, and that the schedule fixed by the commission is too low to afford a fair return upon the value of the road, the remedy is plain: for the law makes it the duty of the commissioners 'from time to time, and as often as circumstances may require, to change and revise said schedules.'"

The attention of the Court is also called to the following case: *Railroad Commission of Alabama vs. Central of Georgia Railway Company*, 170 *Fed., page* 225. This was a case on appeal to the Circuit Court of the Fifth District from the order granting an interlocutory injunction. The Circuit Court held that an interlocutory injunction had been improperly granted by

the District Court and announced the doctrine to be that where the evidence was conflicting and the case was not a clear one that an interlocutory injunction should be refused and that this was especially true where it was sought to enjoin the operation of a rate which had not yet gone into effect, where it was probable that a practical test of the rate would be required to ascertain the truth of the conflicting claims of the respective parties and that in such a case where there was a conflict of testimony that the injunction should not be granted on *ex parte* affidavits alone merely stating opinions. The Court, through Judge Shelby, said:

> "Where it is doubtful what, upon the final hearing may be ascertained to be the real facts of the case, and where the rights of the complainants are such that they will suffer no more injury if they finally succeed than would be inflicted on the defendants if unjustly enjoined, it is often the duty of the court to refuse a preliminary injunction. Especially is this true in a case where it is sought to enjoin the operation of a law fixing rates alleged to be confiscatory, when it is probable that a practical test of the law will be required to ascertain the truth. To adopt a different rule, the defendants might be unnecessarily and improperly restrained from doing what they have a right to do, and, such restraint suffer an injury for which they could obtain no adequate compensation." * * *

> "It is argued that the injunction should be issued because the rights of the defend-

ants and all interested are secured by bonds. It is true that the courts have held that the fact that the defendants' rights may be secured by bond is sometimes a sound reason, in cases where the final result is doubtful, for exercising judicial discretion in favor of granting the preliminary injunction. But that rule is not always controlling, and clearly it should not be applied in cases where the bond does not afford adequate protection. Here the bonds given are intended to secure innumerable passengers and shippers or consignees. It is not at all probable that the claims of one-tenth of them, on breach of bonds, would ever be presented, or, if presented, would be paid, and to enforce payment in the courts, unless those injured combined in their efforts, would cost more than the claim is worth. Those familiar with the Tift case know that the bond proved ineffectual as complete indemnity in that case, although the parties sought to be protected were large shippers of lumber. Tift, et al, v. Southern Railway Company, et al (C. C.) 123 Fed. 798; Id., 10 Interst. Com. Rep. 548; Id., (C. C.) 138 Fed. 753; Southern Ry. Co., et al v. Tift, et al), (C. C. A.) 148 Fed. 1021; Id. 206 U. S. 428, 27 Sup. Ct. 709, 51 L. Ed. 1124; Tift, et al, v. Southern Ry. Co. et al, (C. C.) 150 Fed. 555. Where the injunction is granted, the bonds should, of course, be required, but the court cannot safely exercise its discretion upon the theory that the bond in a case like this gives complete indemnity."

We consider this case determinative on the question, in view of the peculiar and particular

facts surrounding the case at bar, and the great conflict of evidence.

The Commission has the power, if these rates are not compensatory, to make a subsequent order modifying their present order raising the rates to such an extent that the appellants may recoup whatever loss that they might incur pending an actual trial of the rates, and neither the appellants nor the court should assume that the Corporation Commission would not do its duty in this respect.

Appellants complain of various statutes of Arizona prescribing penalties for the violation of any order of the Commission. These statutes are not unconstitutional and do not fall within the rule laid down in the case of *ex parte Young, supra.*

In the case of *ex parte Young, supra*, the Supreme Court held that a certain statute fixing transportation rates for carriers within the state was unconstitutional, because of the severe penalties provided by the statute for non-compliance with the same, but a close analysis of this case will demonstrate that the Supreme Court based its ruling in this respect upon the fact that the penalties were attached before the corporation had any opportunity for a hearing by which the justice or injustice of the rates prescribed by the statute might be determined, and a further analysis will point out this significant fact; that while the Court granted an interlocutory injunction enjoining the enforcement of the rate fixed by the

statute, they refused to grant an interlocutory injunction enjoining the rate fixed by the Commission of that State.

After the hearing and determination of a case upon the merits a state commission has a right to enforce its orders by punishment for contempt or other adequate penal remedies. Otherwise no commission could enforce its orders. The statutes complained of are constitutional. The point, however, is of no importance in this case, for the reason that the order of the Commission is an entirely distinct question and not dependent upon the penalties fixed by the statutes.

Wilcox vs. Consolidated Gas Co., 212 *U. S.* 10, *text page* 54, 53 *L. Ed.* 300.

So. Pac. Co. vs. Campbell, 57 *L. Ed.* 1610, 230 *U. S.* 537; *also Western Union Tel. Co. vs. Richmond*, 224 *U. S.* 160 (56 *L. Ed.* 710).

To argue that if the order of the Commission was and is a valid exercise of the police power of the State, and that its enforcement might be enjoined, because the penalties prescribed by a separate statute for its non-enforcement are severe, would be to argue an absurdity.

The sole question for the Court to determine is, whether or not the order of the Commission is so unreasonable and arbitrary as to be utterly void. Unless it can say that this fact clearly appears beyond any question of doubt, the order of the Commission is a valid exercise of the police

power of the State, and should be carried out and enforced, no matter what the penalties may be for its non-enforcement.

Because of the reasons heretofore given, and the authorities heretofore cited in this Brief, we respectfully contend that the decree below, in so far as it denied the injunction restraining the appellees from enforcing the orders of the Corporation Commission should be affirmed, and that the injunction prayed for by appellants to restrain the Corporation Commission from enforcing penalties against appellants should have been denied by the Court below.

Respectfully submitted,

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Attorney General of the State of Arizona, appearing *in propria persona* and as Attorney for the remaining appellees.

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Samuel Hsmeck

VAN DYKE ET AL. *v.* GEARY ET AL., MEMBERS OF THE CORPORATION COMMISSION OF THE STATE OF ARIZONA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ARIZONA.

No. 52. Argued March 23, 1917.—Decided May 7, 1917.

In a case governed by Judicial Code, § 266, where the jurisdiction of the District Court is invoked upon constitutional questions, this court, upon appeal from an order denying preliminary injunction, has jurisdiction to review the whole case. *Louisville & Nashville R. R. Co.* v. *Garrett*, 231 U. S. 298.

Extension of the power of the Corporation Commission to the regulation of water systems belonging to individuals, as provided in the Public Service Corporation Act of Arizona (Rev. Stats., 1913, Title 9, c. XI), is permitted by the Constitution of Arizona, Art. XV.

In the absence of an authoritative decision of the Supreme Court of the State to the contrary, a contemporaneous construction of the state constitution by an act of the legislature which is reasonable in itself and designed to accomplish the obvious purpose of the constitutional provision in question should be followed by this court.

Art. IV, pt. 2, § 13, of the Arizona Constitution requiring that acts of the legislature shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title, is sufficiently complied with by the Arizona Public Service Corporation Act, *supra*, although that act applies to individuals as well as corporations, while its title refers to corporations and makes no mention of individuals.

One who uses his property in supplying a large community with water thereby clothes such property with a public interest and subjects the business to public regulation.

Where it is conceded that the purpose of a water system is to supply water to the residents and inhabitants of a particular townsite, though not to outsiders or the public generally, the mere fact that the lots of the townsite were originally purchased from the owner of the water system with the oral understanding that water could be secured from that system for use on the lots has no tendency to support the claim that the system furnishes water only to particular individuals

in pursuance of private contracts made with such lot purchasers and is hence devoted exclusively to private use.

The fact that service is limited to a part of a town does not prevent a water system from being a public utility.

Water rates fixed by a state commission upon a basis of a net annual return of 10% of the value of the property employed, allowing an annual depreciation charge of 3½%, *Held* not confiscatory, the valuation of the water system and estimate of operating expenses having been made by the state commission and concurred in by the District Court after careful inquiry by both, the evidence presented to this court being conflicting, and the District Court having appropriately protected the complaining party by providing that application for injunction may be renewed after one year if the rates appear too low.

218 Fed. Rep. 111, affirmed.

THE case is stated in the opinion.

Mr. William C. Prentiss, with whom *Mr. F. C. Jacobs* was on the brief, for appellants.

Mr. Samuel Herrick, with whom *Mr. Wiley E. Jones*, Attorney General of the State of Arizona, and *Mr. R. Wm. Kramer* and *Mr. Geo. W. Harben*, Assistant Attorneys General of the State of Arizona, were on the brief, for appellees.

MR. JUSTICE BRANDEIS delivered the opinion of the court.

In 1909 Ida A. Van Dyke and her husband organized a corporation under the name of the Miami Townsite Company to acquire a tract in Gila County, Arizona, and establish a town thereon. A large part of Miami is now located on that land. In order to supply residents and others thereon with water for domestic, commercial and fire purposes, the Van Dykes introduced a water system which developed rapidly. In October, 1913, the Arizona Corporation Commission, a public service com-

mission with the usual powers of regulation, instituted before itself a proceeding to have the rates charged by the water system declared excessive, and to have reasonable rates established. The Van Dykes, who were duly served, filed a "plea in bar"; alleged that the plant was the individual property of Ida A. Van Dyke; that the business was operated by her with her husband as manager, and not by a corporation; and denied not only the validity of the order but also the jurisdiction of the commission over them. The objection to the jurisdiction was overruled; and the commission proceeded to a hearing on the merits, at which the Van Dykes offered no evidence. On May 1, 1914, after an elaborate report, an order was entered greatly reducing the water rates. The Van Dykes promptly filed a motion for a rehearing, which was denied. Thereupon they applied to the commission to stay the operation of the order pending proceedings for review in the state court. This application also was denied. Then they filed, in the District Court of the United States for the District of Arizona, this suit against the members of the commission, the Attorney General of the State and the county attorney to enjoin the enforcement of the order and the prosecution for penalties for failure to observe the same; and to have the order itself cancelled.

Both plaintiffs and defendants are citizens and residents of Arizona. Jurisdiction of the federal court was invoked solely on the ground that the order of the commission, if enforced, would deprive plaintiffs of their property in violation of the Fourteenth Amendment; and that the penalties prescribed by the Arizona statute for failure to obey the order are so severe as to prevent resort to the remedies therein provided for testing in the state courts the validity of the orders. An interlocutory injunction was applied for; and the case was heard before three judges under § 266 of the Judicial Code. The jurisdiction of the court was sustained under the rule declared

in *Ex parte Young*, 209 U. S. 123; but the court refused relief against the order reducing water rates, saying:

"The evidence submitted by the complainants does not afford this Court a satisfactory basis on which to adjudicate the question of the value of the property used as a water plant, and therefore the Court cannot say that the rates prescribed by the Corporation Commission are confiscatory, and there is no basis on which an order could be made declaring them illegal. If hereafter it shall appear that under actual operation of the plant under these rates, the return allowed by such Corporation Commission operates as a confiscation of the property of complainant, Ida A. Van Dyke, she may, at the expiration of one year, again present her evidence to the Court and obtain appropriate relief on the facts then presented.

"The Court will retain jurisdiction of the case with permission to complainant, Ida A. Van Dyke, if so advised, after the expiration of one year, to renew her application for an injunction against the rates established by the Corporation Commission as confiscatory. In the meantime the rates established will remain in force."

From an order entered in accordance with this opinion the Van Dykes appealed; and this court has jurisdiction to review the whole case. *Louisville & Nashville R. R. Co.* v. *Garrett*, 231 U. S. 298.

The errors alleged are, in substance, as follows:

First: That the Arizona Constitution and Public Service Corporation Act were construed and applied to subject property owned and operated by a natural person to regulation, as a public service corporation.

Second: That a water system established for the purpose of furnishing water only to purchasers of lots from the Miami Townsite Company was treated as a public water system.

Third: That the rates fixed are confiscatory.

These alleged errors will be considered in their order.

1. *Whether the Arizona Corporation Commission had jurisdiction to regulate a water system owned by an individual.*

Arizona was admitted as a State February 14, 1912; and on that date its constitution, which had been adopted December 9, 1910, took effect. By Article XV it created (§ 1) a corporation commission with full power to establish reasonable rates in the public services; and declared (§ 2) that corporations engaged in furnishing water "shall be deemed public service corporations." The Arizona Public Service Corporation Act (Ariz. Rev. Stats. 1913, Tit. 9, c. XI) provides that the term "public service corporation" shall include "water corporation," § 2278 (z); that "water corporation" shall include "every corporation or *person* . . . owning, controlling, operating, or managing any water system for compensation within this State," § 2278 (x); that the term "person" includes an individual, § 2278 (d); and that the term "water system" shall include all property used in the supply or distribution of water "for municipal, domestic, or other beneficial use," § 2278 (w). It is clear that the legislature intended that the powers of the Corporation Commission should extend to plants owned and operated by individuals, and that the language used by it was adequate to express that intent. But it is insisted that provisions of the Arizona Constitution forbid the grant of such a power by the legislature; and the question resolves itself into this: Are the terms "corporation" and "public service corporation" in Article XV of the constitution, used in the limited sense of incorporated companies, or do they include all public utilities both incorporated and unincorporated and whether they be firms or individuals?

Article XV, entitled "The Corporation Commission," consists of nineteen sections,[1] and confers broad powers of

[1] Included are the following:

"Section 1. A Corporation Commission is hereby created to be com-

regulation. The character of the service, that is, whether it is public or private, and not the character of the ownership, determines ordinarily the scope of the power of regulation. The need of such regulation and the manner of exercising it are the same whether a public utility is incorporated or not; and the purpose of a public service commission could easily be frustrated if concerns owned by individuals were excluded from its operation. The District Court accordingly declined to give a technical mean-

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posed of three persons, who shall be elected at the general election to be held under the provisions of the enabling Act approved June 20, 1910, and whose term of office shall be co-terminous with that of the Governor of the State elected at the same time, and who shall maintain their chief office, and reside, at the State Capital. . . .

"Sec. 2. All corporations other than municipal engaged in carrying persons or property for hire; or in furnishing gas, oil, or electricity for light, fuel, or power; or in furnishing water for irrigation, fire protection, or other public purposes; or in furnishing, for profit, hot or cold air or steam for heating or cooling purposes; or in transmitting messages or furnishing public telegraph or telephone service, and all corporations other than municipal, operating as common carriers, shall be deemed public service corporations.

"Sec. 3. The Corporation Commission shall have full power to, and shall, prescribe just and reasonable classifications to be used, and just and reasonable rates and charges to be made and collected, by public service corporations within the State for service rendered therein, and make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction of business within the State, and may prescribe the forms of contracts and the systems of keeping accounts to be used by such corporations in transacting such business, and make and enforce reasonable rules, regulations, and orders for the convenience, comfort, and safety, and the preservation of the health, of the employees and patrons of such corporations; Provided, that incorporated cities and towns may be authorized by law to exercise supervision over public service corporations doing business therein, including the regulation of rates and charges to be made and collected by such corporations: Provided further, That classifications, rates, charges, rules, regulations, orders, and forms or systems prescribed or made by said Corporation Commission may from time to time be amended or repealed by such Commission."

ing to the term "public service corporation," and interpreted it in the broad popular sense as embracing all public utilities. That construction is in line with numerous decisions holding that statutes imposing certain liabilities on "railroad corporations" embrace all railroads whether individually or corporately owned.[1]

It is contended that Article XIV, entitled "Corporations other than Municipal," renders this liberal construction of Article XV inadmissible. Section 1, of Article XIV defines "'corporation,' as used in this article . . . to include all associations and joint stock companies having any powers or privileges of corporations not possessed by individuals or co-partnerships"; and § 16 provides that the records of "all public service corporations" shall at all times be subject to the inquisitorial powers of the State. It is argued that the term "public service corporation," thus excluding individually-owned utilities, could hardly have a different meaning in the very next article of the constitution. But the answer is that Article XIV deals only with the organization, incorporation, management and powers of technical corporations, and the definition therein of "corporation" is for that reason expressly limited by the phrase "*as used in this Article.*" This is significant and is entirely in harmony with the view that the term as used in some other article having a wholly different purpose, should bear a different and broader construction.

Furthermore, the powers of the Arizona Corporation Commission are not limited to those expressly granted by the constitution. Section 6 of Article XV authorizes the legislature to "enlarge the powers and extend the duties of the Corporation Commission"; and the legislature, by

[1] *Union Pacific Ry. Co.* v. *De Busk*, 12 Colorado, 294, 304; *Pittsburgh, C. C. & St. L. Ry. Co.* v. *Lightheiser*, 168 Indiana, 438; *Schus* v. *Powers-Simpson Co.*, 85 Minnesota, 447, 450–451; *Lewis* v. *Northern Pacific Ry. Co.*, 36 Montana, 207, 218.

defining "water corporation" to include "persons" owning a water utility, clearly extends the powers of the commission to individually-owned concerns. So that even if the commission was not originally vested by the constitution with power over utilities owned by individuals, it now has that power directly by legislative enactment. In other words the constitution prescribed a certain minimum of power with which the commission was intrusted; it authorized the legislature to enlarge from time to time the scope of the commission's duties; and the legislature extended them to water concerns owned by individuals.

This construction of the Arizona Constitution by the District Court is in harmony with the contemporaneous construction evidenced by the Public Service Corporation Act (*supra*) enacted at the first session of its legislature. In the absence of an authoritative decision of the Arizona Supreme Court to the contrary, this legislative construction, reasonable in itself and designed to accomplish the obvious purpose of the constitutional provision, ought not to be set aside by this court. *Louisville & Nashville R. R. Co.* v. *Garrett*, 231 U. S. 298, 305.

Appellants contend also that even if the legislature had power to extend the jurisdiction of the Corporation Commission to water systems owned and operated by individuals, the Public Service Corporation Act was, in this respect, invalid under Article IV, Part 2, § 13 of the Arizona Constitution, because this purpose was not expressed in the title of that act.[1] Constitutional provisions re-

[1] The Arizona Constitution (Art. IV, Part 2, § 13) provides that:

"Every Act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be embraced in the title."

The Act is entitled:

"An Act relating to Public Service Corporations, Providing for the

quiring the subject of legislative acts to be embraced in the title are not to be given a strained and narrow construction for the purpose of nullifying legislation. The "subject," as expressed in the title, is the regulation of "public service corporations"; and the provision in the act that "public service corporations" shall include "persons" owning a public utility is a matter obviously connected therewith.

2. *Whether the Van Dyke Water System is a private business.*

The Van Dyke system appears to be the only water supply of the inhabitants of the original town of Miami (not including the "additions"). The number of water takers is not shown. But it appears that the large consumers who used meters numbered, at the time of the commission's investigation, 675, yielding a revenue of $11,378.10; and that the number of small takers must have been much larger, since the revenue derived from the flat rates was $14,517.35. "Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large." *Munn* v. *Illinois*, 94 U. S. 113, 126. The property here in question was devoted by its owners to supplying a large community with a prime necessity of life. That Mrs. Van Dyke pumps the water on her own land, stores it in tanks on her own land and thence conducts it through pipes all upon her own land (the strips reserved in the streets for conduits being owned by her), and delivers it to purchasers at the boundary line between her and their properties; and that lot purchasers bought with the understanding that they might purchase water from Mrs. Van Dyke's water system at rates fixed by her—are

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Regulation of the Same, Fixing penalties for the Violation Thereof, and Repealing Certain Acts; with an Emergency Clause."

all facts of no significance; for the character and extent of the use make it public; and since the service is a public one the rates are subject to regulation.

Counsel contend that the use is not public, because water is furnished only to particular individuals in fulfillment of private contracts made with the purchasers of townsite lots. But there is nothing in the record to indicate that such is the fact. Purchasers seem to have bought merely with the oral understanding that water could be secured from the Van Dyke system. Affidavits filed by appellants state expressly that their water system is operated "for the purpose of supplying the residents and inhabitants of said Miami Townsite with water, and not for the purpose of supplying persons outside of said townsite, or the public generally with water." The offer thus is to supply all the "inhabitants" within the given area; and that of course includes sub-vendees, tenants and others with whom the Van Dykes had no contract relations. The fact that the service is limited to a part of the town of Miami does not prevent the water system from being a public utility. See *Del Mar Water &c. Co.* v. *Eshleman*, 167 California, 666, 681–3.

3. *Whether the rates fixed are confiscatory.*

The commission decided that the net return to the owner upon the value of the property employed should be at the rate of at least ten per cent., after allowing an annual depreciation charge of three and one-half per cent. Water rates prescribed on this basis obviously cannot be held confiscatory unless either the valuation placed upon the property used was grossly inadequate or the cost of operation greatly underestimated. These elements are largely matters of fact and opinion, as to which both the commission and the District Court, after careful examination, found against the appellants. The case is presented to us on contradictory affidavits dealing with the items

of value which go to make up the water system. We cannot say "that it was impossible for a fair-minded board to come to the result which was reached." *San Diego Land & Town Co.* v. *Jasper*, 189 U. S. 439, 442; *Knoxville* v. *Knoxville Water Co.*, 212 U. S. 1, 18. And the provision in the order of the District Court by which it retained jurisdiction of the case with permission to Mrs. Van Dyke to renew her application for an injunction after one year, if the rates fixed appeared to be confiscatory, afforded her appropriate protection.

The decree of the District Court is

Affirmed.

MR. JUSTICE MCREYNOLDS dissents.